

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In re: Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al., Chapter 11
Jointly Administered
Debtors.

-----x
RESIDENTIAL CAPITAL, LLC, et al.,
Plaintiffs, Adv. Case No.
V. 13-01343 (MG)

UMB BANK, N.A., IN ITS CAPACITY AS
INDENTURE TRUSTEE FOR THE 9.625%
JUNIOR SECURED GUARANTEED
NOTES, et al.,

Defendants.

-----x
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, on behalf of the estate
of the Debtors,
Plaintiff, Adv. Case No.
v. 13-01277 (MG)

UMB BANK, N.A., AS SUCCESSOR
INDENTURE TRUSTEE UNDER THAT
CERTAIN INDENTURE, dated as of
June 6, 2008, et al.,

Defendants.

-----x
DEPOSITION OF CONOR BASTABLE
November 1, 2013
New York, New York
9:42 a.m.

Reported by:
ERICA L. RUGGIERI, RPR, CSR, CLR
JOB NO: 32297

Yellow Highlighting = JSN Designations
Pink Highlighting = Plaintiff's Designations
Orange Highlighting = Joint Designations

November 1, 2013

9:42 a.m.

Deposition of CONOR BASTABLE,
held at the offices of Curtis,
Mallet-Prevost, Colt & Mosle, LLP
101 Park Avenue, New York, New York,
pursuant to Notice, before Erica Lynn
Ruggieri, RPR, CSR, CLR and Notary
Public within and for the State of New
York.

A P P E A R A N C E S:

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1
2 A P P E A R A N C E S: (Cont'd)

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8 BY: AARON L. RENENGER, ESQ.

9 arenenger@milbank.com

10 ERIN CULBERTSON, ESQ.

11 eculbertson@milbank.com
12
13
14
15
16
17
18

19 ALSO PRESENT:

20 TRAVIS TROYER, Davidson Kempner
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25

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND
AGREED, by and between counsel for the
respective parties hereto, that the
filing, sealing and certification of
the within deposition shall be and the
same are hereby waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as
to the form of the question, shall be
reserved to the time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may
be signed before any Notary Public
with the same force and effect as if
signed and sworn to before the Court.

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BASTABLE

C O N O R B A S T A B L E, called
as a witness, having been duly sworn
by a Notary Public, was examined and
testified as follows:

EXAMINATION BY

MR. WALSH:

Q. Good morning. Could you state
your name for the record.

A. Conor Bastable.

Q. Good morning, Mr. Bastable. You
understand, Mr. Bastable, that you are
attending this deposition as both an
individual and also as a corporate
representative for the Davidson Kempner
companies, correct?

A. I do.

Q. And you have been selected as
well as the corporate representative on
select topics that were addressed to the
ad hoc group. Do you understand that as
well?

A. Yes, I do.

Q. When I refer to the ad hoc group
you understand that that refers to the ad

1 BASTABLE

2 hoc group of junior secured noteholders --

3 A. Yes.

4 Q. -- in this case?

5 Have you ever been deposed
6 before?

7 A. I have.

8 Q. Just a few ground rules for my
9 benefit and the court reporter's. Let me
10 finish my question before you give your
11 answer. I will try to do the same. If at
12 any point you don't understand my
13 question, let me know and I'll rephrase.
14 If at any point you need to take a break,
15 just let us know. I only ask that you
16 finish the answer to my question before we
17 take a break.

18 A. Sure.

19 Q. Mr. Bastable, can you start with
20 your educational background.

21 A. Yeah. I went to undergrad at
22 Princeton University. Graduated in 1995
23 and business school at Harvard Business
24 School. I graduated in 2002.

25 Q. Where did you go to work after

1 BASTABLE

2 Harvard?

3 A. I joined Davidson Kempner.

4 Q. In what position?

5 A. As an associate in their
6 distress investments area.

7 Q. And can you just briefly
8 overview your promotion or positions?

9 A. Yeah. From 2002 to 2007 --
10 sorry, excuse me. From 2002 to 2005 I was
11 an associate there. From 2005 to the end
12 of 2007 I was a managing director. And
13 since two thousand, the beginning of 2008
14 I have been a partner at the firm.

15 Q. Is Davidson Kempner a hedge fund
16 for lack of a better word?

17 A. Yes.

18 Q. And how many funds are under the
19 Davidson Kempner name?

20 A. As a legal matter, there's, I
21 believe, nine funds but there's really
22 three different strategies, I guess, that
23 we would invest in.

24 Q. Can you give us an overview of
25 those three investment strategies?

1 BASTABLE

2 A. When I say three investment, we
3 have a large multistrategy fund that
4 invests in a variety of different
5 strategies, including distressed, equity
6 long/short, convertible arbitrage, risk
7 arbitrage. Then we have a distressed only
8 fund that invests in distressed
9 opportunities. And then we have two sort
10 of longer duration funds that also pursue
11 opportunities in the distressed space.

12 Q. Which of those fund areas are
13 you employed?

14 A. I oversee the distressed or one
15 of three portfolio managers who oversees
16 the distressed component of the
17 multistrategy fund. And then I am one of
18 the three portfolio managers who is
19 directly responsible for managing the
20 distressed only funds that I mentioned.

21 Q. Would you give us the name of
22 the multistrategy funds and then the names
23 of the distressed only funds?

24 A. Yeah. There's -- well, entity
25 wise, I may not be stating these, the

1 BASTABLE

2 exact legal names. There's four funds in
3 the multistrategy fund: MH Davidson &
4 Co., Davidson Kempner Partners, Davidson
5 Kempner International, Limited, and
6 Davidson Kempner Investment Partners, I
7 believe. So those are the four primary
8 funds that invest in -- that are part of
9 the multistrategy fund.

10 Q. Would you give us the name of
11 the funds that are involved in the
12 distressed strategy?

13 A. There's basically. Reason these
14 exist, there's onshore/offshore funds. So
15 there's an onshore distressed
16 opportunities fund and then an offshore
17 distressed opportunities fund. And then
18 similarly for longer duration funds it
19 would be the same thing, where there's an
20 onshore and an offshore fund for each of
21 those.

22 MR. RENENGER: I'm just going to
23 interject here to designate this
24 deposition confidential under the
25 protocol.

1 BASTABLE

2 Q. Would you just go through the
3 names of the funds for the distressed
4 area.

5 A. One would be these may not be --
6 we can get the exact legal title but the
7 Davidson Kempner Distressed Opportunities
8 Fund, LP, Davidson Kempner Distressed
9 Opportunity, Limited, would be the two
10 distressed funds. And then similarly for
11 what we call our drawdown funds, it would
12 be Davidson Kempner Long-Term Distressed
13 Opportunities Fund, LP, and similarly
14 named fund, which is I think an Ltd. or
15 another offshore entity.

16 MR. WALSH: Let me mark a few
17 exhibits, including our deposition
18 notices.

19 (DK Exhibit 1, deposition
20 notice, marked for identification, as
21 of this date.)

22 (DK Exhibit 2, deposition
23 notice, marked for identification, as
24 of this date.)

25 Q. Mr. Bastable, I have handed you

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DK-1 and DK-2. Do you recognize those as

3

the deposition notices under rule

4

30(b)(6)?

5

A. I do.

6

Q. And we will go through this in a

7

little bit more detail. But am I correct,

8

sir, that you are the witness that will

9

address topics in each of these notices.

10

With respect to the ad hoc group, we have

11

identified the specific topics.

12

MR. RENENGER: The exhibit you

13

handed out for the ad hoc group has

14

all 45 topics on it.

15

MR. WALSH: Right. If you look

16

at page 2, you'll see Mr. Bastable is

17

designated, per our discussions with

18

counsel for topics 21, 22, 23, 34 and

19

35.

20

Q. And you understand,

21

Mr. Bastable, that you are here today to

22

testify as a corporate witness for the ad

23

hoc group for those topics?

24

A. I do.

25

Q. Can you tell us what you did to

1 BASTABLE

2 prepare for today's deposition, please?

3 A. Yeah. I would have spent time
4 reviewing certain documents related to the
5 case. I spent time consulting with
6 counsel. And I spent some time in, having
7 discussions with several colleagues of
8 mine who would have worked on the ResCap
9 matter.

10 Q. Let's start with the documents.
11 Do you recall which documents you reviewed
12 in preparing for today's deposition?

13 A. Well, I prepared -- you know, we
14 reviewed a number of the documents that I
15 believe were delivered as part of the
16 discovery relating to this deposition.
17 And then I would have reviewed, you know,
18 the PS -- the PSA I think was included in
19 that and, you know, several other
20 documents. I believe I looked at the
21 summary of the examiner's report in the
22 case. And probably a few other documents.

23 Q. When you refer to the PSA,
24 that's the plan support agreement?

25 A. That's right.

1 BASTABLE

2 Q. And that's the plan support
3 agreement from May 2012?

4 A. Yes.

5 Q. Did you have an opportunity to
6 look at the security agreement that was
7 prepared in connection with the notes?

8 A. I did not review that in advance
9 of this discussion.

10 Q. Have you reviewed any of the
11 filings in the case besides the examiner's
12 report in preparing for today's
13 deposition?

14 A. I looked at the ad hoc group's
15 plan objection and then there were -- I
16 think there were a couple of other filings
17 that we looked at in preparation for the
18 deposition.

19 Q. Do you recall which?

20 A. Not specifically. I mean, we
21 were looking at, yesterday we were looking
22 at, you know, something that was filed in
23 association with the sale of the, both the
24 servicing and HFS assets. You know, I
25 don't remember exactly what number on the

1 BASTABLE

2 docket it was. But it was items like
3 that.

4 Q. You also mentioned that you met
5 with counsel. Is that Mr. Renenger?

6 A. Yeah. Mr. Renenger, Mr. Uzzi,
7 and those were the two primary.

8 Q. And when was that?

9 A. That was two days ago.

10 Q. And how long did you meet?

11 A. Probably met for three hours.

12 Q. Anyone else in attendance?

13 A. Yes. There was three of my
14 colleagues were there at various points.
15 Sara Tirschwell, Kunal Shah and Ephraim
16 Diamond. Those are the three individuals
17 at DK who would have been involved in the
18 ResCap transaction most directly. In
19 addition, at one point Dan Groper from
20 Aurelius Capital Management joined for a
21 period of time.

22 Q. Anyone else?

23 THE WITNESS: You were there.

24 And that's I think it.

25 Q. You are referring to Erin?

1 BASTABLE

2 A. Erin, yeah.

3 Q. Was anyone from Houlihan in
4 attendance?

5 A. No.

6 Q. Were there any other meetings in
7 connection with this deposition besides
8 the one 2 days ago, any other meetings
9 with counsel?

10 A. There were no other actual
11 meetings, no.

12 Q. You referred to discussions with
13 people within DK, the same people you
14 mentioned would have attended?

15 A. Yeah, it would have been those
16 three.

17 Q. When would that have occurred?

18 A. We would have had conversations
19 on Tuesday.

20 Q. On Tuesday. And what was
21 discussed in those meetings?

22 A. It was, you know, general issues
23 relating to what we were going to be --
24 what I was going to be addressing in the
25 deposition.

1 BASTABLE

2 Q. Did you review the topics in the
3 30(b)(6) notice?

4 A. Yes.

5 Q. Did you review any documents
6 with your colleagues at DK?

7 A. We did in conjunction with the
8 meeting on Wednesday. Not separate from
9 that.

10 Q. Did you review any e-mails,
11 historic e-mails with your colleagues in
12 connection with your deposition?

13 A. Sorry, let me -- just to be
14 clear, we did meet -- I guess we did meet
15 this morning prior to this depo.

16 Q. I'll include that as well.
17 Going back to the meetings with people at
18 DK, did you review any historic e-mails?

19 A. We did.

20 Q. Do you recall which e-mails?

21 A. There was a number of e-mails.
22 Most of which you probably would have.

23 Q. Let me ask you about the
24 document collection. Were you involved in
25 the document collection in response to our

1 BASTABLE

2 document request?

3 A. Not directly, no.

4 Q. How were you involved?

5 A. Well, I wasn't really involved.

6 Q. Do you know who was involved in

7 that collection?

8 A. Yeah.

9 Q. Who was that?

10 A. Travis Troyer who is here today.

11 Q. And I'm sorry, the last name is

12 Troyer?

13 A. Troyer, yeah.

14 Q. Did Mr. Troyer collect your

15 documents in connection with that document

16 collection?

17 A. He did.

18 Q. How did he go about doing that?

19 A. I believe he did it by scanning,

20 primarily scanning e-mails and collecting

21 hard copies of documents that we would

22 have delivered to him.

23 Q. And do you know if he did that

24 for other people who worked on the ResCap

25 matters?

1 BASTABLE

2 A. He did.

3 Q. How many other people?

4 A. Well, I'm sure he did it for the
5 three people I mentioned before. An
6 e-mail would have gone out to a broader
7 group, which probably would have included
8 the other partners in the distressed
9 group, specifically Tony Yosilov and Avi
10 Friedman. I'm not sure if anyone else
11 would have received anything. But the
12 idea obviously would have been to collect
13 any documents we would have had relating
14 to ResCap.

15 Q. And all of those documents were
16 delivered to counsel?

17 A. Yes.

18 Q. For their review and production?

19 A. Yes.

20 Q. Do you recall roughly how many
21 documents were produced to counsel?

22 A. I don't.

23 Q. Do you use Bloomberg messaging
24 at DK?

25 A. Occasionally.

1 BASTABLE

2 Q. Did you use it in connection
3 with ResCap?

4 A. I don't recollect.

5 Q. Let me ask you, when did DK
6 first become involved in ResCap?

7 A. We have been involved in ResCap
8 since, I believe, 2009.

9 Q. How did that happen?

10 A. You know, following the
11 financial crisis ResCap and at that time
12 what was GMAC were in financial distress
13 and as a result securities that they had
14 issued started trading as a discount. And
15 the primary -- one of the primary
16 strategies of our firm is to look at and
17 invest in distressed corporate bonds. So
18 as result, we started to do work to
19 understand what was going on in the
20 combined kind of ResCap GMAC corporate
21 entity.

22 Q. Had DK invested in any ResCap
23 securities prior to that time?

24 A. No.

25 Q. How did DK initially invest in

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ResCap?

MR. RENENGER: Object to the
form of the question.

MR. WALSH: Let me rephrase.

Q. What was DK's first investment
in ResCap?

JSN Objection
21:6-23:13 FRE 402
(Not relevant)

A. I'd have to go back and get the
specifics but at various points prior to
the petition date we would have owned both
unsecured bonds issued by ResCap and
junior secured -- and the so-called JSNs.

Q. And when we refer to JSNs, you
understand that to be the 9 and 5/8ths
notes that are at issue in this case?

A. That's right.

Q. So if I refer to them as JSNs
throughout the deposition --

A. Yes.

Q. -- you understand what I mean?

A. Yes.

Q. Roughly when was your first
investment in JSNs?

A. I'm going to say we were first
involved in them sometime in 2011. We

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BASTABLE

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would have that information. I'm not sure

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that -- I don't remember the exact date,

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but it would have been, I think, in 2011.

5

Q. Do you recall the amount of JSNs

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that you purchased, that DK purchased at

7

that time?

8

A. Our initial investment would

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have been relatively small, which is, you

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know, order of magnitude might have been

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10 or 20 million face value. It may have

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been early 2012.

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Q. So either late 2011, early 2012.

14

And do you recall what price you paid?

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A. I believe the initial purchase

16

would have been around \$0.65 on the

17

dollar.

18

Q. And were there any subsequent

19

purchases of JSNs by DK?

20

A. Yes.

21

Q. What were they?

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A. Again, a combination of JSNs and

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unsecured notes.

24

Q. And when were they, when were

25

these purchases?

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BASTABLE

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A. We would have made significant

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additional purchases of JSNs throughout

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the first half of 2012. And then at that

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point I think we owned a small amount of

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unsecured notes. And then our position --

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our position may have moved around a

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little bit after the company filed for

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bankruptcy but has remained somewhat

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constant, although there has been some

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trading activity in addition. And more

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recently we did increase our exposure on

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the unsecured notes.

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Q. I'm going to show you some of

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the Rule 2019 statements that are filed in

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the case. You are familiar with those

17

documents?

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A. Yes.

19

MR. WALSH: This will be DK 3.

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(DK Exhibit 3, verified

21

statement of White & Case, marked for

22

identification, as of this date.)

23

Q. Sir, if you turn to the first

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page on corrected Exhibit A, that's page 3

25

of the document. You'll see a reference

1 BASTABLE

2 to Davidson Kempner Capital Management,
3 LLC?

4 A. Yes.

5 Q. Does that accurately reflect the
6 holdings of notes, JSNs, as of June 11,
7 2012?

8 A. It does.

9 Q. And is Davidson Kempner Capital
10 Management, LLC, for the funds you
11 discussed earlier?

12 A. Yes, it is. Correct.

13 Q. Do you recall, roughly, the
14 breakout of fund's holdings of the 115
15 million of notes that are reflected here
16 as of this time?

17 A. All of these notes would have
18 been held in funds that are under our,
19 what I described before as our
20 multistrategy fund. I wouldn't know the
21 breakdown. However, the allocation would
22 simply be based on the relative size of
23 each of those funds.

24 Q. Do you recall if there were any
25 sales of JSNs prior to this date, June 11,

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BASTABLE

2012?

MR. RENENGER: Object to the
form of the question.

Q. Were there any sales of JSNs?

A. I do not believe that there were
prior to this date.

Q. Has DK or any of DK funds ever
sold any of the JSNs that it holds?

A. I would have to look. It is
possible that we have, although I'm not
sure that we have actually sold them.

Q. What information did DK review
in connection with its initial investment
of JSNs?

A. At the time, we would have
relied on public financial information.
You know, ResCap filed 10-Ks and 10-Qs.
We would have used that information. We
would have reviewed whatever public
information was available with regard to
the notes themselves including, you know,
evaluating the security package associated
with those notes. We would have looked at
other debt instruments in the company's

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BASTABLE

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capital structure. We would have

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obviously evaluated what we thought was

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likely to happen to ResCap over the

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subsequent period of time. We would have

6

been aware that there was some risk that

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ResCap might be forced to file for

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bankruptcy. And we would have evaluated

9

the implications of that.

10

Q. You said you would have

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evaluated the security package. What did

12

you mean by that?

13

A. Meaning that there would be --

14

there would have been some amount of

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public information related to the JSNs,

16

including the collateral that was

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associated with those notes, you know,

18

what entity obviously issued the notes,

19

what entities were guarantors on the

20

notes. And we would have used that to

21

inform our investment decision.

22

Q. What was DK's understanding of

23

the collateral that was secured by these

24

notes?

25

A. Well, we knew that there was a

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BASTABLE

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direct -- there was direct blanket

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security lien that the notes were entitled

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to. We also understood that there were

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intangible assets that were part of the

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company's collateral package. We believed

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that there were intercompanies that

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existed between various entities within

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ResCap and that the notes were

10

potentially, could be potentially

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beneficiaries of that from a collateral

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perspective.

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Q. What do you mean by that,

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intercompanies?

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A. Meaning it's very typical in a

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large corporate organization that has

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various entities that there would be money

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flowing back and forth between those

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entities. And it would not be unusual for

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a secured creditor to take a lien over

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those to ensure that if money left one of

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the entities that we were a direct

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guarantor from or the entity that was our

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borrower, that we would still have a claim

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on that value.

1 BASTABLE

2 Q. Were you aware that a noteholder
3 actually had a lien on intercompanies at
4 ResCap, JSN noteholder?

5 MR. RENENGER: Object to the
6 form of the question.

7 Q. And were you aware of that at
8 the time of the purchase?

9 MR. RENENGER: Same objection.

10 A. I would have to go back and look
11 at our analysis at that time. So I don't
12 recollect what exactly we were aware of
13 when we made our initial -- when we made
14 our initial purchase.

15 Q. When you say you'd have to go
16 back and look at your analysis, what are
17 you referring to?

18 A. We would have prepared an
19 investment memorandum. And some of the
20 individuals who would have worked for me
21 might have done other work to evaluate the
22 investment opportunity.

23 Q. Did you look at that investment
24 memorandum in connection with this
25 deposition?

1 BASTABLE

2 A. I don't know if I went back and
3 looked at that one specifically. There
4 would have been a number of different -- a
5 number of different types of material
6 prepared during the time that we were
7 invested in securities of ResCap. I
8 believe I did go back and look at some of
9 that material.

10 Q. Did DK prepare an investment
11 memorandum for each of its purchases of
12 JSNs over the time period?

13 A. No.

14 Q. Did it prepare more than one
15 investment memorandum?

16 A. Yes.

17 Q. Do you recall how many?

18 A. I don't.

19 Q. More than two?

20 A. Probably, yeah.

21 Q. What type of information is
22 discussed in the information -- I'm
23 sorry -- in the investment memo? What is
24 the review?

25 A. The review would be the

1 BASTABLE

2 individuals I described before, Sara
3 Tirschwell, Kunal Shah, Ephraim Diamond
4 would have put together this memo which
5 would be, you know, a number of pages in
6 length outlining the investment
7 opportunity, specifically addressing some
8 of the things we talked about before,
9 financial analysis, security package,
10 other relevant considerations relating to
11 the investment. And that would be
12 presented to myself, Tony Yosilov and Avi
13 Friedman, who were the three portfolio
14 managers for the strategy.

15 Q. Do you recall any of the
16 investment memoranda with respect to
17 ResCap specifically mentioning
18 intercompany balances as part of the
19 collateral?

20 A. I don't. But I believe at some
21 point that those would have been included
22 in the analysis that was provided.

23 Q. At which point?

24 A. I would have to go back and
25 look.

1 BASTABLE

2 Q. Do you know if it was 2012 or
3 2013?

4 A. It would very likely have been
5 2012.

6 Q. Do you recall if it was the
7 beginning of 2012 or the end of 2012?

8 A. I don't recall.

9 Q. What other collateral was
10 considered by DK in connection with its
11 initial investment of JSNs?

12 MR. RENENGER: Object to the
13 form of the question.

14 A. Would you like to repeat.

15 Q. Yeah, I'm happy to. You
16 mentioned that one of the pieces of the
17 analysis was an analysis of the collateral
18 and you mentioned the intercompany
19 balances. What other collateral was
20 considered by DK in connection with its
21 initial investment of ResCap JSNs?

22 A. We would have considered the
23 direct collateral that we believe the JSNs
24 were entitled to, which was, again, our
25 read of the documents at that time would

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BASTABLE

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have led us to conclude that we had, you

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know, a blanket lien, although which was

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subordinated to an ally revolver over the

5

vast majority of the assets of ResCap.

6

And that analysis would have been done to

7

evaluate the asset coverage on the JSNs.

8

Q. Anything else?

9

A. Not that I specifically

10

recollect at that time.

11

Q. We were looking at the 2019, and

12

listing for DK is 115 million of notes.

13

That's face value I presume?

14

A. Yes.

15

Q. Do you recall if these funds are

16

proprietary accounts of DK or if they are

17

held for investors?

18

A. No, they are held for investors.

19

Q. All of the funds are held for

20

investors?

21

A. Yes -- yeah, all of the funds at

22

least in part. And in most cases in their

23

entirety are held for investors.

24

Q. And when I say all of the funds,

25

I'm referencing all of the DK funds?

1 BASTABLE

2 A. That's right.

3 Q. And I assume the same answer for
4 all of the DK funds that specifically
5 invested in JSNs?

6 A. That's right.

7 Q. They are held for investors?

8 A. That's correct.

9 MR. WALSH: Next exhibit.

10 (DK Exhibit 4, Rule 2019
11 statement, marked for identification,
12 as of this date.)

13 Q. Mr. Bastable, are you looking at
14 the 2019 that is docket entry 488? Do you
15 see that at the top?

16 A. Yes.

17 Q. Do you recognize this as the
18 Rule 2019 statement filed by the ad hoc
19 group in June of 2012?

20 A. Yes.

21 Q. If you turn to page 1, page 3 of
22 9, is it correct, you'll see at the top of
23 the page it references to page 3 of 9.

24 A. Yes.

25 Q. There was no increase or

1 BASTABLE

2 decrease in the holdings of DK and JSNs
3 from the prior 2019?

4 A. This is as of the same date as
5 the prior one so.

6 Q. Just a correction as with
7 respect to other holders; is that right?
8 If you turn to the back of the page,
9 there's other ones that have been
10 corrected.

11 MR. RENENGER: Object to the
12 form of the question.

13 A. Yeah.

14 Q. For example, page 7.

15 A. Yes.

16 Q. Did you have any involvement in
17 the preparation of these Rule 2019s?

18 A. No.

19 Q. Do you know if anyone at DK
20 provided the information to counsel to
21 prepare these 2019s?

22 A. Yes. Someone would have
23 provided that information.

24 MR. WALSH: I'm going to mark
25 the next two DK 5 and 6.

1 BASTABLE

2 (DK Exhibit 5, May 7, 2013 2019,
3 marked for identification, as of this
4 date.)

5 (DK Exhibit 6, May 17, 2013
6 2019, marked for identification, as of
7 this date.)

8 Q. Sir, I have given you the 2019s
9 from May 7, 2013, and May 17, 2013. Just
10 quickly, if we look at page 4 of 6 of DK
11 5, it reflects holdings by Davidson
12 Kempner Capital Management, LLC, of 157
13 million of notes. And just to jump ahead,
14 it appears that shortly after that the ad
15 hoc group submitted, this is DK 6, page 4,
16 a second 2019 reflecting an increase in
17 the value of the DK holdings to 191 of
18 notes.

19 A. Right.

20 Q. Was there an increase in value
21 of the two dates or was the initial report
22 inaccurate?

23 MR. RENENGER: I'm going to just
24 object that this is beyond the scope
25 of the 30(b)(6) topics. I'll give you

1 BASTABLE

2 a little bit of leeway. The topic in
3 the notes have to do with decisions
4 made in 2012 and now we are in 2013.

5 MR. WALSH: This will be quick.

6 Q. I just want to find out what
7 your holdings were.

8 A. I'm sorry. The only thing I'm
9 looking at is the May 2, 2013, report that
10 has the 157 million.

11 Q. And was that the holdings of DK
12 at the time?

13 A. I believe so.

14 Q. And then if you look at the next
15 document, which is May 17th. It's DK 6.

16 A. I have the same document twice.

17 Q. Page 4 reflects 191 million face
18 value notes?

19 A. Right.

20 Q. Was there an increase in value
21 over the week period?

22 A. No.

23 Q. So as of May 2013 DK's holdings
24 of JSNs was approximately or was 191 face
25 value, 191 million face value?

1 BASTABLE

2 A. Yes.

3 MR. RENENGER: Object to the
4 form of the question.

5 Q. Has Davidson Kempner increased
6 its holdings of JSNs since May of 2013?

7 MR. RENENGER: Again, object as
8 beyond the scope. Go ahead.

9 A. I believe we were about to file
10 an additional 2019. I think the number
11 has maybe increased very modestly,
12 although I'm actually not sure. It is
13 very close to this figure.

14 Q. Going back to 2012. You said
15 the initial investment in JSNs was late
16 2011, early 2012. When did DK first
17 become involved in the ad hoc group as it
18 relates to the JSNs?

19 A. That would have been in the
20 spring, late spring of 2012.

21 Q. And how did DK become involved
22 in the ad hoc group?

23 MR. RENENGER: Object to the
24 form of the question.

25 A. The ad hoc group would have

1 BASTABLE

2 formed as a result of a number of large or
3 a low number of JSN holders becoming
4 increasingly concerned about the prospect
5 of ResCap having to file for bankruptcy.
6 It's very common in our market that
7 holders would at that time retain counsel
8 and begin to work in what is typically
9 called an ad hoc group. And we would have
10 gone out, and likely there was
11 conversations probably with a couple
12 different law firms, I don't recollect who
13 else we spoke to at the time other than
14 what was, would have been White & Case.
15 And a decision was made to hire, to retain
16 White & Case as counsel to the ad hoc
17 group for purposes of representing us in
18 the scenario that the company would file
19 for bankruptcy or that there would be
20 other out of court discussions.

21 Q. When was that decision made to
22 hire White & Case?

23 A. I would estimate in March or
24 April of -- March or April of 2012. But
25 that would be someone could provide that

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information to you. I'm sure there's a --

Q. DK-6 is previously marked as
PX 355. This is the Houlihan engagement
letter.

MR. RENENGER: Would it be DK-7?

MR. WALSH: DK-7.

(DK Exhibit 7, Houlihan
engagement letter, marked for
identification, as of this date.)

Q. Do you recognize this document?

A. I do.

Q. And this is dated February 17,
2012. Does that refresh your recollection
roughly --

A. Yes.

Q. -- when White & Case was hired?

A. Well, this is obviously Houlihan
Lokey, but this retention letter relates
to Houlihan Lokey but White & Case is
referenced here. So I would have assumed
we would have retained them prior to this
call.

Q. Do you recall how much earlier
White & Case was retained?

1 BASTABLE

2 A. I would imagine it was in the
3 month prior to this. So we will call it
4 either early February or late January of
5 2012.

6 Q. If you flip through the
7 signature pages at the end, it starts at
8 page 11 of 25, are the entities that are
9 identified in the signature pages from
10 page 12 through, I guess they are the same
11 on each page, page 12, for example, the
12 entities that are involved in the ad hoc
13 group?

14 A. As of this date, yes.

15 Q. You see that Davidson Kempner is
16 one of the members?

17 A. I do.

18 Q. Was Davidson Kempner one of the
19 first members of that ad hoc group?

20 A. Yes.

21 Q. Were all of these entities the
22 first members of the ad hoc group?

23 MR. RENENGER: I'm going to
24 object to the form of the question.
25 And just say there's another page with

1 BASTABLE

2 other members on it. If you look at
3 page 18 of 25, for example.

4 A. I was going to say the group
5 that I recollect included a broader group.
6 Now that I'm looking at the subsequent
7 signature pages, this, I think, covers all
8 the initial members of the ad hoc group.

9 Q. Just for clarity, would you just
10 list out the members as of this time
11 period?

12 MR. RENENGER: Object to the
13 form of the question.

14 Q. You can do it quickly.

15 A. The signature pages?

16 Q. Yes.

17 A. AllianceBernstein, LP; Appaloosa
18 Management, LP; CQS Global Services,
19 Limited; Davidson Kempner Capital
20 Management, LLC; Loomis, Sayles & Company,
21 LP; P. Schoenfeld Asset Management, LP;
22 Paulson & Co., Inc.; Pentwater Capital
23 Management, LP, Silver Point Capital, LP;
24 York Capital Management Global Advisors,
25 LLC.

1 BASTABLE

2 Q. Thank you. Was there any
3 written document with respect to the ad
4 hoc group? Was there a charter, for
5 example?

6 MR. RENENGER: Object to the
7 form of the question.

8 A. No. I don't believe there was a
9 charter, as you would describe it.

10 Q. Any document that reflected the
11 relationship amongst the ad hoc group?

12 A. There would have obviously been
13 an engagement letter with White & Case and
14 that might have provided for some
15 governance as it were. I don't think
16 there was anything specifically along the
17 lines of what you are describing.

18 Q. With respect to the decisions
19 that the ad hoc group made, was there any
20 written document regarding how decisions
21 would be made?

22 MR. RENENGER: Are you referring
23 to any particular point in time?

24 MR. WALSH: At this time period.
25 Early 2012.

1 BASTABLE

2 A. Not that I recollect.

3 Q. At any later point?

4 A. I don't believe so.

5 Q. How were decisions made in early
6 2012 by the ad hoc group?

7 A. You know, generally speaking,
8 there would have been -- well, again, I'm
9 not sure the chronology of this. At some
10 point the group broke -- the larger
11 members of the group formed a steering
12 committee. So that was formed in order to
13 facilitate communications with counsel.
14 It's unwieldy to have as many members on
15 calls as would be listed on these
16 documents. So a smaller group would have
17 been a steering committee. We would have
18 had regular calls with counsel and
19 financial advisors to discuss relevant
20 issues.

21 Q. At what point was the steering
22 committee formed?

23 A. I believe the steering committee
24 would have been formed in the spring of
25 2012.

1 BASTABLE

2 Q. And who were the members of the
3 steering committee at that time?

4 A. I believe the steering committee
5 would have consisted of ourselves, I
6 believe Silver Point, I think Paulson was
7 on the committee at the time. May have
8 been -- I would have to go back and look
9 to see what other members were on that, on
10 it at that point in time.

11 Q. Has the membership of the
12 steering committee changed over time?

13 A. Yes, it has.

14 Q. And can you quickly go through
15 the changes as you recall?

16 A. Over time other security holders
17 would have acquired positions. For
18 example, Marathon Asset Management became
19 a large holder and joined the steering
20 committee at some point. I believe
21 Paulson dropped off the steering committee
22 at some point because they had sold out of
23 their position. Those are examples of how
24 the committee -- Appaloosa was also
25 participating in the committee. I believe

1 BASTABLE

2 both in the committee, certainly in the
3 steering committee. They also dropped off
4 at some point.

5 Q. Did Loomis drop off at some
6 point?

7 A. Loomis dropped off. They would
8 have sold their position.

9 Q. Did anyone join at that time
10 period, spring 2012 through the present?

11 MR. RENENGER: Object to the
12 form of the question.

13 Q. Did anyone join the steering
14 committee?

15 A. As I mentioned before, at some
16 point I believe Marathon did. And then --

17 Q. And then anyone else -- thank
18 you. Anyone else besides Marathon?

19 A. Aurelius Capital,
20 A-u-r-e-l-i-u-s.

21 Q. And when did Aurelius join?

22 A. That would have been in the fall
23 of 2012.

24 Q. Do you recall which month?

25 A. I believe on November of 2012.

1 BASTABLE

2 Q. Anyone else join the steering
3 committee?

4 A. Not that I recollect. But
5 again, there were enough changes in the
6 composition of the committee that I
7 wouldn't be able to tell you everyone.

8 Q. Who currently is in the steering
9 committee?

10 A. Well, the participants right
11 now, I believe ourselves, Aurelius are
12 still involved, Silver Point, Marathon I
13 believe is still involved. But we could
14 get you that list if you want the exact
15 composition.

16 Q. Going back to 2012. Do you
17 recall if it was a group decision to
18 retain White & Case or if it was the
19 steering committee's decision?

20 MR. RENENGER: Object to the
21 form of the question.

22 A. Yeah, I think the retention of
23 White & Case would have been prior to the
24 forming of the steering committee. So it
25 would have been the group's decision.

1 BASTABLE

2 Q. How was that decision made, do
3 you know?

4 A. There would have been
5 conversations with White & Case about
6 their qualifications to advise the group
7 and very likely conversations with one or
8 two other law firms who were being
9 considered. And then based on those
10 conversations, the group would have
11 discussed the best firm to retain and the
12 decision was made to retain White & Case.

13 Q. Let me ask you the same question
14 about Houlihan. How was the decision to
15 hire Houlihan made?

16 A. Yeah. It was a similar process.
17 At that point I think White & Case was
18 involved but it was based on the
19 experience that the principals and that
20 Houlihan as an institution brought to the
21 table. And we decided they were best
22 qualified to represent us.

23 Q. What was your understanding of
24 what Houlihan's role would be going
25 forward from February 2012?

1 BASTABLE

2 A. It wasn't clear from the --
3 exactly what their role would be. But
4 again, the idea of hiring a financial
5 advisor to represent a group of creditors
6 is a very conventional one. And, you
7 know, broadly speaking, we felt like it
8 was very likely that we were going to need
9 to do some financial analysis on ResCap to
10 evaluate their position, our rights as
11 creditors, the potential recoveries, I
12 guess, for us as creditors. And in many
13 cases the information that we might get
14 would not be public. So we could use,
15 potentially use Houlihan as an
16 intermediary and also they could do, even
17 if it was public information, they could
18 be helpful in supplementing our own
19 financial analysis of the company.

20 Q. Let me ask, before Houlihan was
21 retained, what information, if any,
22 besides public information, did DK have
23 with respect to ResCap?

24 A. Well, I mean I think we only had
25 access to public information. I guess can

1 BASTABLE

2 you be more specific.

3 Q. Sure. I want to get into any
4 discussions that DK alone would have had
5 with the debtors, with ResCap. Were there
6 any discussions between DK and ResCap or
7 any ResCap representative prior to
8 February 2012?

JSN Objection
49:3-20 FRE 402
(Not relevant)

9 A. I'm sure there were. Again, it
10 would be very typical for us as part of
11 our due diligence process to try to
12 contact a company to verify or ask
13 questions about some of the conclusions
14 that we had reached doing our own
15 independent analysis. And we would have
16 had -- we would have reached out to them
17 in an attempt to clarify those. And they
18 would either have investor relations or
19 other members of ResCap's management would
20 have addressed those issues for us.

21 Q. Do you recall when the first
22 instance of DK contacting debtors?

23 A. I don't.

24 Q. Do you recall if it was prior to
25 February 2012?

1 BASTABLE

2 A. I don't.

3 MR. WALSH: This will be DK-8.

4 It's the security agreement.

5 (DK Exhibit 8, Security
6 agreement between ResCap, U.S. Bank
7 and Wells Fargo, marked for
8 identification, as of this date.)

9 Q. Do you recognize DK-8?

10 A. Yes, I do.

11 Q. What is that?

12 A. It's the Amended and Restated
13 Third Priority Pledge Security Agreement
14 and Irrevocable Proxy between ResCap and
15 U.S. Bank and Wells Fargo.

16 Q. Is this the security agreement
17 that reflects the JSNs security interest
18 in ResCap?

19 A. Yes.

20 Q. When was the first time that DK
21 saw this document?

22 A. I don't know.

23 Q. When was the first time you saw
24 the document?

25 A. I don't know if I have seen this

1 BASTABLE

2 document. There would certainly be
3 individuals at DK who would have reviewed
4 this document.

5 Q. Do you know with respect to the
6 initial investment by DK in JSNs, whether
7 anyone at DK reviewed this document?

8 A. I think it is extremely likely
9 that someone reviewed this document.

10 Q. Again, I'm referring to the
11 period before Houlihan was retained. Do
12 you know what financial information DK
13 received from ResCap for that time period?

14 MR. WALSH: Let me fix the time
15 period.

16 Q. So there was an initial
17 investment?

18 A. Correct.

19 Q. Fair to say you didn't have any
20 contact with ResCap before that initial
21 investment?

22 A. No, it's not safe to say that.

23 Q. You did have contact?

24 A. I don't know. We would have --
25 again, I think it's actually likely that

1 BASTABLE

2 we would have reached out to them before
3 making the initial investment.

4 Q. Do you know who at DK would have
5 done that?

6 A. It was probably Sara Tirschwell
7 and/or Kunal Shah.

8 Q. Do you know for a fact whether
9 either one of those individuals did speak
10 to ResCap?

11 A. I don't know.

12 Q. Do you know whether they spoke
13 to ResCap after the initial investment?

14 MR. RENENGER: Object. Any time
15 between then and now.

16 MR. WALSH: Let's fix it.

17 Q. Any time between the initial
18 investment and the Houlihan engagement
19 letter of February 2012.

20 A. Right. Again, I can't say
21 definitively, but I think it's very likely
22 that they would have had contact with
23 someone at ResCap.

24 Q. I assume you are basing this
25 testimony on custom and practice by DK in

1 BASTABLE

2 connection with their investment?

3 A. Yes.

4 Q. You don't know one way or the
5 other whether they actually did?

6 A. I can't definitively say, but I
7 think it's extremely likely that they did.

8 Q. Let me just fix on the custom
9 and practice of DK because it appears you
10 don't know exactly whether these
11 individuals spoke to ResCap. Is it the
12 custom and practice for DK to receive
13 additional financial information besides
14 10-Ks and 10-Qs from companies?

15 A. No.

16 Q. Do you know if -- what type of
17 information DK obtains from companies in
18 connection with its investments. I mean,
19 is it analyst reports? I'm trying to
20 understand besides --

21 A. Companies don't typically
22 provide us with any information directly.
23 The companies are willing to discuss
24 public information and answer questions
25 about their business. Those are the types

1 BASTABLE

2 of discussions that we would typically
3 have.

4 Q. Just give me again examples
5 based on custom and practice of the types
6 of questions that DK would ask the
7 question?

8 MR. RENENGER: Object to the
9 form of the question. Go ahead.

10 A. Yeah. I mean, we would -- we
11 would review the company's financial
12 statements. A company like ResCap is very
13 complicated. There's a certain amount you
14 can learn by looking at those financials.
15 And -- but that inevitably leads to a lot
16 of questions and the company can be
17 helpful in clarifying questions that we
18 might have about the financial condition
19 of the company.

20 Q. It's your position that the
21 custom and practice you are only
22 discussing publicly available information?

23 A. That's right.

24 Q. Let me ask you this. Do you
25 know if at any point before Houlihan was

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BASTABLE

retained whether DK received any nonpublic
information from ResCap?

A. We would not have received any
nonpublic information.

Q. Let me ask the same question
about the ad hoc group. Before February
2012, did the ad hoc group receive any
public information from ResCap?

MR. RENENGER: Object to the
form of the question. Beyond the
scope.

A. No, I do not believe the ad hoc
group received any nonpublic information.

Q. Was there a point in time when
the ad hoc group entered a nondisclosure
agreement with ResCap?

A. Yes.

Q. When was that?

A. That would have been for
purposes of negotiating the PSA so I
believe we would have signed that
agreement in May of 2012.

Q. That was the first NDA between
the ad hoc group and ResCap?

1 BASTABLE

2 A. Yes.

3 Q. And is it your understanding
4 that prior to that date the ad hoc group,
5 no member of the ad hoc group was privy to
6 nonpublic information of ResCap?

7 MR. RENENGER: Object to the
8 form of the question. To the extent
9 you can speak to whether any member of
10 the ad hoc group had information, of
11 course feel free to speak to it.

12 A. Yeah. I mean, I can't -- I
13 obviously can't address what any of other
14 firms would have received. The group was
15 never provided any information directly
16 and Davidson Kempner was never provided
17 any information directly.

18 Q. Nonpublic?

19 A. Yeah, nonpublic.

20 Q. The group was provided public
21 information?

22 A. I'm not even sure the group was
23 necessarily provided public information.
24 Again, are you talking about from the
25 company?

1 BASTABLE

2 Q. From the company, yes --

3 A. There would have been some
4 correspondence between our counsel and our
5 financial advisors in the company.
6 Whether or not that resulted in them
7 providing us anything, I actually don't
8 recall.

9 MR. RENENGER: Can I just
10 interject? I think maybe this will be
11 a clarification on this. When you say
12 the ad hoc group, are you talking
13 about the members of the group as
14 forming the group or are you also
15 including information that may have
16 been received by advisors. Because
17 I'm just concerned that if Houlihan or
18 Milbank got information, I just don't
19 want there to be an implication that
20 they did or didn't. That wasn't
21 intended to be in the scope of your
22 answer.

23 MR. WALSH: I am referring to
24 both, either members of the ad hoc
25 group or advisors to the ad hoc group.

1 BASTABLE

2 A. Give me the time frame again.

3 Q. At any point in early 2012.

4 A. Prior to the --

5 Q. The NDA?

6 A. Prior to the NDA being signed.

7 I don't recall. Again, there may have
8 been some information in that time frame
9 provided to Milbank or Houlihan, but that
10 information would not have been provided
11 to the ad hoc group.

12 Q. I just want to clarify for the
13 record we are going to be taking the ad
14 hoc group's 30(b)(6) next week and that is
15 something we will want to address with
16 that witness.

17 Let me ask you, you are familiar
18 with something called Interlinks?

19 A. Yes.

20 Q. What is Interlinks?

21 A. Intralinks.

22 Q. Intralinks. Thank you.

23 A. Intralinks is kind of an online
24 portal that is used in the financial
25 services business that allows for

1 BASTABLE

2 information to be posted onto a secured
3 website. And in many cases there would be
4 a public and private portion of an
5 Intralink site. And to the extent you
6 want to get access to the private
7 information, you would have to make an
8 election on the site. So it allows -- it
9 sort of provides effectively sort of a
10 digital record of who is seeing private
11 information relating to a specific company
12 or whatever the situation that people are
13 involved in.

14 Q. Do you know if in this time
15 period, early 2012, whether ResCap had an
16 Intralink system?

17 A. Prior to signing the NDA, I
18 don't.

19 Q. And same question for 2011. Do
20 you know if in 2011 ResCap had an
21 Intralink system available?

22 A. I don't. But it is possible
23 that they did.

24 Q. Let me ask the same question
25 after the NDA was signed. After the NDA

1 BASTABLE

2 was signed, were you aware whether ResCap
3 made an Intralinks system available?

4 A. I specifically don't. Again, at
5 DK I would not be the person accessing
6 Intralinks' site directly. So it is --
7 again, it's quite possible they used that
8 in some way to provide information, but I
9 just don't specifically know.

10 Q. Who at DK would have accessed
11 Intralinks?

12 A. Again, I think it would be the
13 individuals I referenced before Sara
14 Tirschwell, Kunal Shah, Ephraim Diamond.

15 MR. WALSH: Is now a good time
16 for a break?

17 MR. RENENGER: Sure.

18 (Whereupon, there is a recess in
19 the proceedings.)

20 (DK Exhibit 9, plan support
21 agreement, marked for identification,
22 as of this date.)

23 Q. Sir, I have handed you
24 Exhibit 9. It's the plan support
25 agreement. Do you recognize this?

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BASTABLE

2

A. No, I don't actually have that

3

in front of me.

4

Q. Sorry. Handing you Exhibit 9.

5

A. Okay. Yes, I do.

6

Q. And if you turn to the back of

7

the documents and flip through the

8

signature pages. The fourth signature

9

page, is that your signature?

10

A. Yes, it is.

11

Q. This was the plan support

12

agreement from May 14, 2012?

13

A. Correct.

14

Q. Do you recall when it was

15

signed, at least when you signed it? Did

16

you sign it on May 14th?

JSN Objection
61:14-18:
FRE 611(a) (Compound)

17

A. If I didn't sign it that day, I

18

would have signed it prior to.

19

Q. You see that some of the

20

signature pages are May 11th, May 13th.

21

Does that refresh your recollection

22

whether you signed it either May 11th or

23

May 13th?

24

A. I'm sure I signed -- where is

25

it?

1 BASTABLE

2 MR. RENENGER: Back a couple
3 pages.

4 Q. For example, AllianceBernstein
5 is dated May 11th.

6 A. Yes. Sure. We all would have
7 signed within a few days of the --

8 Q. Is it fair to say you signed
9 before May 14th?

10 A. Yes.

11 Q. We were talking about the ad hoc
12 group and how decisions were made by the
13 ad hoc group. How was the decision made
14 by the ad hoc group to enter this PSA?

15 MR. RENENGER: Object to the
16 form of the question.

17 A. I guess I can --

18 Q. Let me rephrase just to make
19 sure I can address the objection. Was
20 there a decision by the ad hoc group that
21 signed, at least the members of the ad hoc
22 group, that signed this plan support
23 agreement to enter this plan support
24 agreement?

25 A. There was a decision made by

1

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2

each individual firm to sign up to this

3

PSA and obviously we all reached the same

4

decision. So as a result the group was

5

full supportive of signing the PSA. But

6

those, Davidson Kempner made an

7

independent decision to sign the PSA.

8

Q. How did Davidson Kempner come to

9

its decision to sign the PSA?

10

A. The PSA provides certain

11

benefits for process holders and in

12

exchange for that we were providing

13

certain benefits to both the debtor and

14

Alli. And at its core it was, I would say

15

it was sort of a business decision for us

16

informed by what we believed were our

17

rights as creditors, and we thought it was

18

a favorable economic deal that increased

19

both the speed with which we would get

20

repaid on our notes and increased the

21

certainty that we would get repaid on

22

those notes. And we were willing to

23

accept some of the terms that are included

24

in the PSA in exchange for that, for those

25

benefits.

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Q. What was your understanding as

JSN Objection
64:2-12

3

of this time period what you would be paid

FRE 611(a) (Vague and
ambiguous)

4

on the notes?

5

A. We believed -- we believed we

6

would be paid par, plus all of our

7

prepetition interest, plus to the extent

8

that we would have not been repaid by the

9

end of 2012, then we would have

10

received -- we would have begun to receive

11

post petition interest on whatever that

12

residual claim was.

13

Q. Did DK calculate what, in fact,

JSN Objection 64:13-21
FRE 611(a) (Compound)

14

the payments would be to DK on the notes

15

on par and as of accrued interest?

16

A. Yes.

17

Q. And what was that amount?

18

A. The amount for all bondholders,

19

and I'm quoting this on a kind of cents on

20

the dollar basis, was just under 105 cents

21

on the dollar as of the petition date.

22

Q. Was there any calculation what

23

the post petition interest would be if the

24

plan was not confirmed by the end of 2012?

25

MR. RENENGER: Object to the

1

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2

form of the question.

3

A. Yes, there would have been some

4

calculation of that as well.

5

Q. Do you recall what that

6

calculation resulted in?

7

A. No.

8

Q. You said that in connection with

9

signing the PSA you provided certain

10

benefits to the debtors and to Alli. What

11

were those benefits?

12

A. Primarily releases to both the

13

debtor and Alli. But in addition to that,

14

you know, I think the -- having the plan

15

support agreement presumably in general

16

was viewed by certainly the debtor and I

17

believe Alli as a positive step towards

18

the ultimate restructuring of the company.

19

Q. Did you understand that Alli was

20

making a contribution to the bankruptcy,

21

prepetition bankruptcy, in connection with

22

this PSA?

23

A. We did.

24

Q. What was your understanding of

25

the amount of the Alli contribution?

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A. We understood that they were going to be contributing \$750 million.

Q. And did DK do an analysis of that \$750 million to determine whether that was an adequate contribution by Alli?

A. We did not.

Q. Did the ad hoc group do an analysis like that?

A. Not in that form, no.

Q. What type of analysis, if any, did the ad hoc group do to determine whether the Alli contribution was adequate?

A. Well, we weren't particularly focused on the adequacy of that number. We didn't have enough information at that time to evaluate it. That was obviously satisfying a number of potential issues that related to intercompany transactions that existed between Alli and ResCap prior to the petition date. And it was a very complicated analysis and we didn't have enough information to evaluate it. And the, part of the reason we entered into

1

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2

the PSA was we felt like -- one of the

3

benefits we got from the PSA was Alli was

4

going to be subordinating a portion of

5

their revolver which would have had a

6

senior claim to us on collateral proceeds.

7

So we kind of viewed everything as a

8

comprehensive transaction. And we felt

9

that if \$750 million came into the estate,

10

that would be sufficient under the terms

11

of the PSA to pay us off at par plus our

12

prepetition interest and plus, to the

13

extent there was still debt outstanding

14

after the end of 2012, post petition

15

interest on that amount.

16

Q. If the plan was confirmed

17

consistent with the PSA in 2012, however,

18

you understand that the noteholders would

19

not receive post petition interest?

20

A. If the plan had been confirmed

21

and all of our debt had been extinguished

22

as of that date, we would not have been

23

entitled to subsequent post petition

24

interest.

25

Q. That was one of the benefits

1

BASTABLE

2

that you were providing to the debtors in

3

connection with signing the PSA?

4

A. Yes.

5

MR. RENENGER: Object to the

6

form of the question.

7

Q. You were waiving your rights to

8

post petition interest accrued from the

9

date of the petition through the end of

10

2012 if those events you mentioned

11

occurred in 2012?

12

A. That's right.

13

Q. You also understood that in

14

signing the PSA you are waiving at least

15

some portion of your right to liens on

16

intercompany balances, correct?

17

A. That's right.

18

Q. What analysis did DK do with

19

respect to the intercompany balances prior

20

to signing the PSA?

21

A. We would have tried to do some

22

analysis. However, the public disclosure

23

before the company filed was relatively

24

limited vis-à-vis the amounts -- the size

25

of the intercompanies and the value

1

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2

attributed to those. However, we were

3

aware that we had potential collateral

4

value from those intercompanies and we

5

believed that there was likely substantial

6

value associated with those intercompany

7

assets. However, there wasn't

8

deconsolidating financial statements until

9

the company filed for bankruptcy that

10

would have given us enough information to

11

evaluate those figures with a high degree

12

of certainty.

13

Q. What was your belief that there

14

was substantial value in the intercompany

15

balances based upon?

16

A. We did have some information

17

relating to guarantor and nonguarantor

18

entities. So you could look at those

19

balance sheets and that could inform your

20

decision. And then I believe there was

21

some incremental disclosure about

22

specific, at least the book value of

23

certain intercompany assets that we did

24

use to inform that opinion.

25

Q. Did you have an understanding of

1

BASTABLE

2

the value, the approximate dollar value of

3

those intercompany balances prior to the

4

PSA?

5

A. We had an estimate of those

6

values.

7

Q. What was that estimate?

8

A. I'd have to go back and look.

9

But it was not an immaterial amount

10

relative to the recoveries or the size of

11

the debt outstanding.

12

Q. Was it more or less than a

13

billion dollars?

14

A. I believe we thought it was less

15

than a billion dollars.

16

Q. Was it more or less than \$500

17

million?

18

A. I think we thought it was less.

19

I'd have to go back. We may have believed

20

in certain scenarios that it was in excess

21

of \$500 million.

22

Q. You reference certain balance

23

sheets of guarantors. Do you recall which

24

guarantors?

25

A. These were the guarantors under

1 BASTABLE

2 the JSNs.

3 Q. These are the GMAC guarantors or
4 specifically who are you referring to?

5 A. Yeah. These would be -- no,
6 these are ResCap entities.

7 Q. ResCap entities?

8 A. Yeah.

9 Q. And is it your understanding
10 that prior to the PSA date, May 14, 2012,
11 that Houlihan had done an analysis of the
12 intercompany balances?

13 A. They -- yes. They had looked at
14 that.

15 Q. And do you know what information
16 Houlihan received in connection with the
17 intercompany balances prior to May 14th?

18 A. Yeah, they -- I believe they
19 would have been provided more specificity
20 in terms of the exact size of those
21 intercompany loans. And then they would
22 have presumably had individual balance
23 sheets for all the ResCap entities which
24 could help inform that analysis.

25 Q. And where did they receive those

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individual balance sheets?

A. They would have received those
from ResCap.

Q. And those -- that would have
been nonpublic information?

A. That's right.

Q. Provided pursuant to the NDA?

A. Correct.

Q. Do you recall when that
information was provided?

A. I don't recall the specific
date, but it was in this, you know,
general time frame that we are talking
about.

Q. May of -- April, May of 2012?

A. Correct.

Q. And was there any other
information that either Houlihan -- well,
any other information that Houlihan
received in connection with the
intercompany balances besides the items
that you've listed?

A. Relating to the intercompanies
specifically?

1 BASTABLE

2 Q. The analysis.

3 A. Yeah. I'm sure that it's
4 possible there was other supplemental
5 information provided to them. I'm sure
6 they would have attempted to get as
7 thorough a picture as possible regarding
8 the intercompanies but I don't
9 specifically know.

10 Q. We looked at the Rule 2019
11 report that reflected increased holdings
12 by DK from 2012 to 2013. I can't remember
13 if I asked. Do you recall specifically
14 when that increase occurred, which month
15 in the time period?

16 A. No.

17 Q. Do you recall if it was 2012 or
18 2013?

19 A. It would have been both in 2012
20 and 2013.

21 Q. And you mentioned these
22 investment memos. You did review some of
23 those investment memos in connection with
24 today's deposition?

25 A. Yes. I looked at least one

1 BASTABLE

2 investment memo that we had put together.

3 Q. And did that document help
4 refresh your recollection about some of
5 the items that we are talking about today?

6 A. Yes.

7 Q. Do you recall any of these
8 investment memos actually addressing
9 intercompany balances?

10 A. I believe -- and there would
11 have been different information provided,
12 I don't want to just -- at DK we would
13 have specific -- an investment memo is
14 sort of a specific document. There might
15 be other documents provided to me by Kunal
16 or Sara that would have addressed the
17 intercompany issue. Whether or not it
18 made it into an investment memo, I don't
19 know.

20 MR. WALSH: I'm going to mark
21 the Houlihan presentation.

22 (DK Exhibit 10, Houlihan
23 presentation, marked for
24 identification, as of this date.)

25 MR. WALSH: Just for the record,

1 BASTABLE

2 DK-10 was previously marked as PX 169.

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. And when was the first time you
6 saw this document?

7 A. This would have been, I'm
8 looking at it, it's, you know, labeled May
9 of 2012, it would have been presented to
10 us in May of 2012 prior to signing the
11 PSA.

12 Q. Do you recall in what context it
13 was presented to you? Was there a
14 meeting?

15 A. I may not have been at the
16 meeting where this was presented, if there
17 was one. It would have either been at a
18 meeting or on a call. But certainly there
19 would have been representatives from DK
20 party to that meeting or call.

21 Q. When you met with your
22 colleagues at DK to prepare for the
23 deposition, did you review this document
24 with them?

25 A. We did not review this document.

1 BASTABLE

2 Q. Do you know if the document was
3 presented in early May?

4 A. I don't.

5 Q. Do you recall who else was, if
6 you know, who else was present for this
7 presentation?

8 A. Again, I mean it would have been
9 certainly members of the steering
10 committee at that time. So
11 representatives from those firms and I'm
12 sure counsel was also involved in that
13 meeting.

14 Q. What is your understanding of
15 the purpose of this presentation?

16 A. You know, this is what we have
17 been talking about, which is Houlihan had
18 gone in, done an analysis of the
19 company's, you know, financial position
20 and, you know, the purpose of that was to
21 help our due diligence process and inform
22 our decision as to whether or not we
23 should sign up to the PSA.

24 Q. And by this time the ad hoc
25 group had signed the NDA with debtors,

1 BASTABLE

2 correct?

3 A. Yeah. This has -- yeah, subject
4 to the NDA, sure.

5 Q. And this presentation contains
6 information that was provided by the
7 debtors that was not public?

8 A. At the time, yes, this would
9 have been nonpublic information.

10 Q. If you turn, for example, to
11 page 5 of the document. I'm using the
12 Houlihan Lokey numbers there at the bottom
13 right. Do you know if this adjusted
14 balance sheet information was public
15 information or nonpublic?

16 A. I believe this would have been
17 nonpublic information.

18 Q. And if you keep turning the
19 pages, there is a page 10 of the document
20 that is entitled Summary of Estimated
21 Recovery. Is it your understanding that
22 the presentation included an estimate of
23 recovery for JSNs? Part of the
24 presentation was Houlihan providing an
25 estimated recovery of JSNs?

1 BASTABLE

2 A. Yeah. Part of this has been
3 redacted but, yes. I mean, yes, in
4 looking at the subsequent slides clearly
5 part of this was an attempt to estimate
6 recovery of -- for the JSNs.

7 Q. If you look at the right side of
8 the page, there's a reference to Alli
9 contribution, 950 million. That is the
10 750 million contribution that we referred
11 to earlier and an additional 200 million
12 in connection with certain asset sales,
13 correct?

14 A. Correct.

15 Q. The reference is to sold assets
16 above Fortress and Alli. What does that
17 refer to, if you know?

18 A. At the time that the company
19 filed for bankruptcy, they had stalking
20 horse bids for both their servicing assets
21 and other loans that were on the company's
22 balance sheet. And at that point Fortress
23 and Alli were the stalking horse bidders
24 for those assets.

25 Q. When it says percentage of book

1 BASTABLE

2 value, what does is that referring to?

3 A. Sorry, where is that? I'm
4 sorry, in parens. So that is, you know,
5 the company would have accounted for
6 those -- the company's books would have
7 accounted for them at a certain value and
8 the Fortress and Alli market value would
9 have been a certain percentage, it would
10 have allocated a certain percentage of
11 that book value.

12 Q. So, for example, on mortgage
13 loans the percentage of book value is 100
14 to 104. What does that mean?

15 A. Meaning if there was \$100 of
16 book value Fortress would have paid 100 to
17 \$104 for those assets.

18 Q. Is that true for the other items
19 listed here, GNMA, MSRs, for example, is
20 26 percent?

21 A. Yes.

22 Q. So what that is reflecting is
23 that the Fortress-Alli bid was 26 percent
24 of book value for that asset?

25 A. Let me see if that's -- yeah, I

1 BASTABLE

2 believe so.

3 Q. The items liabilities is blacked
4 out, that's redacted. Is that your
5 understanding?

6 A. Yes.

7 MR. WALSH: Counsel, that's
8 redacted because of counsel's work
9 product, is that the argument?

10 MR. RENENGER: It appears to me,
11 I think it's not produced by DK. So I
12 don't know specifically who redacted
13 this or when.

14 Q. If you turn to the next page,
15 11, it appears to be redacted as well. If
16 you turn to page 22 of the document, sir.

17 A. This is the Houlihan page 22?

18 Q. Yes. Thank you. You see that
19 Houlihan has stated that the intercompany
20 claims have been excluded from the
21 analysis. Is that your understanding,
22 that this analysis excludes the value of
23 intercompany claims?

24 A. The analysis on this slide, yes,
25 would have excluded intercompany claims.

1 BASTABLE

2 Q. Is it fair to say that the
3 analysis, and I'm not asking you to waive
4 work product obviously, but the analysis
5 that was provided to the JSNs at this time
6 period, the recovery analysis excluded any
7 recovery of intercompany claims?

8 MR. RENENGER: Object to the
9 form of the question. You are talking
10 about this analysis or any analysis?

11 MR. WALSH: This analysis. The
12 analysis in Exhibit 10.

13 A. No, I'm not sure that's the
14 case. I would say this slide in this
15 analysis excluded.

16 Q. Which is redacted. Do you know
17 if there was a subsequent analysis by
18 Houlihan that did include the value of
19 intercompany claims?

20 MR. RENENGER: I'm going to
21 object to the form of the question and
22 caution the witness that to the extent
23 you are not aware -- you are talking
24 about Houlihan work product. If it's
25 public, you can talk about it. But if

1 BASTABLE

2 it was done in the context of work
3 product, we would instruct you not to
4 answer that question.

5 A. With that advice taken, there is
6 a specific reference even in this
7 presentation to intercompany claims as
8 being a part of our assets. So clearly
9 this was something that we were running
10 scenarios where we were including
11 intercompany receivables as part of our
12 asset recovery. And that's evident on
13 page 12 of this presentation.

14 Q. So at least to page 12, and it's
15 hard to do because it's redacted, but
16 Houlihan performed an analysis of this
17 recovery including intercompany
18 receivables?

19 A. Correct.

20 Q. Let me show you one more
21 document.

22 MR. WALSH: This was previously
23 marked as PX 357. It will be DK-11.

24 (DK Exhibit 11, document
25 entitled, Statement of Limiting

1 BASTABLE

2 Conditions, marked for identification,
3 as of this date.)

4 Q. Before we get to the
5 document 11, the prior document, DK-10, do
6 you know if that was shared with anyone
7 outside of the ad hoc group?

8 A. Not --

9 Q. I include in the ad hoc group
10 the representatives of Houlihan.

11 MR. RENENGER: At this time?

12 MR. WALSH: At any point.

13 MR. RENENGER: Let me just
14 object to the question. I sort of
15 lost the train on the question.

16 MR. WALSH: Let me make it
17 clear.

18 Q. Initially this document was
19 prepared for the benefit of the ad hoc
20 group.

21 A. Right.

22 Q. It was prepared by Houlihan as
23 FA to the ad hoc group. Do you know if an
24 unredacted version of this was shared
25 outside of the ad hoc group?

1 BASTABLE

2 A. No, it was not. At some point
3 there was a release of information that
4 Houlihan had provided to us, of the
5 nonpublic information that Houlihan had
6 provided to us. So that would have been
7 shared to anyone who wanted to look at it.

8 Q. To your knowledge, this document
9 in unredacted form has not been shared in
10 the ad hoc group?

11 A. That's correct.

12 MR. RENENGER: For the record,
13 that document is DK-10.

14 MR. WALSH: Yes. Now on DK-11.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. What is this?

18 A. This is to, again, sort of
19 summary analysis provided by Houlihan
20 addressing the recoveries to JSNs under
21 the PSA construct. And then that's what
22 slide, the first page, which is I guess
23 number 2 of 3 here. And then the one
24 that's number 3 of 3 outlines the timing
25 of recovery for the JSNs.

1 BASTABLE

2 Q. And if you look at slide 2, the
3 bottom right corner of the estimated
4 waterfall recovery, you see total recovery
5 105 percent. Is that the 105 percent that
6 you referred to earlier?

7 A. That's right.

8 Q. This was the estimate, at least
9 at this time, of the JSN recovery under
10 the PSA that was to be signed shortly
11 thereafter?

12 A. Yes.

13 Q. You see on the front page the
14 document is dated May 14th. So it's
15 contemporaneous with the signing of the
16 PSA?

17 A. Yeah.

18 Q. Do you know what assets are
19 included within the pledged collateral on
20 that right side?

21 A. Well, the pledged collateral on
22 the right side is a summary of what's on
23 the left side. So there is, yeah, I mean
24 on the slide there's information provided.
25 As you can see, the assets purchased by

1 BASTABLE

2 Fortress, the assets purchased by Alli are
3 included. There was an amount of cash on
4 the company's balance sheet as of that
5 time and then there was various other
6 residual assets that were going to remain
7 on the company's balance sheet after the
8 sale, asset sales.

9 Q. Am I correct that what Houlihan
10 has done on the left side is taken the
11 book value as of February 29, 2012, as
12 reflected on the cash collateral motion
13 and rolled that forward to February 29,
14 2012, and then rolled forward to
15 December 31, 2012?

16 MR. RENENGER: I'm going to
17 object to the form of the question.

18 Q. Let me ask it in a more
19 straightforward way, if that's easier.
20 What is your understanding of the analysis
21 on the left as it reflects book value
22 February 29, 2012 -- what is your
23 understanding of the various headings
24 under pledged assets?

25 A. Yeah, I mean, I think the first

1 BASTABLE

2 column is straightforward. That's just
3 the book value as of that date. It would
4 have been reported in their public
5 financials. The second was an attempt to
6 estimate, I guess, what the market value
7 of those assets were in part based on we
8 knew what Fortress and Alli were paying
9 for certain assets. And I believe
10 Houlihan would have had conversations with
11 the debtor about what the other assets
12 would be worth versus book value. And
13 then obviously then there was an attempt
14 to, I think the debtor had provided
15 Houlihan with additional information
16 relating to how the balance sheet had
17 changed between February and the petition
18 date. And that information was
19 incorporated into the last column, which
20 was then rolled forward, I guess, to
21 December 31, 2012. But there would have
22 been additional information basically
23 provided to Houlihan from the debtor to
24 formulate the last call.

25 Q. Let me ask the same question

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with respect to the column under Estimated Waterfall Recovery, Illustrative Market Value, December 31, 2012. What does that include?

A. The asset side of it is simply a summary of what's on the left. And then when you get down to beginning at secured recovery distribution, that that is Houlihan's analysis of how those assets would be shared between -- would be shared under the waterfall in the PSA between the Alli senior secured notes and the JSNs.

Q. And the recovery is consistent with the PSA recovery, the first 400 goes to Alli, the next billion to the JSNs, and then there is an 81 percent to JSNs and 19 percent to Alli?

A. Right, yes.

Q. And that's what that waterfall reflects?

A. Yeah.

Q. And then there's a second line of unsecured recovery distributions. Is it your understanding that that also

1 BASTABLE

2 reflects the distributions, the deficiency
3 distributions that are in the PSA?

4 MR. RENENGER: Object to the
5 form of the question.

6 Q. It's the 81/19 percent split.

7 A. I believe the Waterfall One
8 there is. And then Waterfall Two was,
9 there would be, once we had received our
10 full par plus post petition interest, Alli
11 would look to whatever was remaining for
12 the final portion of their recovery.

13 Q. You said post petition interest.
14 Do you mean prepetition interest?

15 A. Pre and to the extent we weren't
16 paid out by December 31, 2012, post
17 petition interest.

18 Q. At that time period had someone
19 calculated what the post petition interest
20 would be after December 2012?

21 MR. RENENGER: Object to the
22 form of the question.

23 A. I don't know -- I believe we,
24 Davidson Kempner, were doing some analysis
25 to that effect. To the extent we weren't

1 BASTABLE

2 paid off -- to be clear we were hopeful
3 and certainly part of the -- what we were,
4 the bargain we were negotiating for was to
5 get paid off as of that date or have the
6 large majority of our claim paid off as of
7 that date. But I believe we did do some
8 analysis to estimate what our rate of
9 return would be on the remaining debt
10 outstanding to the extent we weren't paid
11 off as of that date.

12 Q. The 105 percent recovery as of
13 this time period though assumed payment in
14 full by December 31, 2012?

15 A. I think -- yeah. I mean, yes.
16 If you got paid off by December 31, 2012,
17 you would be entitled to 105 cents on the
18 dollar.

19 Q. And you accepted the PSA based
20 on that assumption? You signed the PSA
21 with Davidson Kempner based on the
22 assumption that there was a 105 percent
23 recovery?

24 MR. RENENGER: Object to the
25 form of the question.

1 BASTABLE

2 Q. Under that PSA?

3 A. Yeah. The PSA is a much broader
4 document. If you are asking me in a state
5 of the world where we signed the PSA and
6 then were subsequently paid off in full
7 including prepetition interest by
8 December 31, 2012, we would have been
9 entitled to 105, approximately 105 cents
10 on the dollar.

11 Q. Am I correct that this analysis
12 does not include any value for
13 intercompany balances?

14 A. This specific analysis does not
15 include any value.

16 Q. Was there any other
17 contemporaneous analysis, either by DK or
18 the ad hoc group, including intercompany
19 value?

20 A. Well, we just looked at some.
21 But it was --

22 Q. It was redacted?

23 A. -- it was pretty clear that
24 there was a line item there that includes
25 value for the intercompanies.

1 BASTABLE

2 Q. And am I correct that the ad hoc
3 group is taking the position that that
4 information is privileged?

5 MR. RENENGER: Well, I will
6 state for the record what I stated
7 before, which is that it was redacted
8 by counsel for the ad hoc group and we
9 stand by the redactions. I believe
10 it's on the basis of work product.

11 Q. First, if you look at footnote
12 3, which is a footnote to the unsecured
13 recovery distributions on the right, you
14 see that there's -- I'll just read it for
15 you quickly and slowly. "Unsecured
16 recovery is based on a legal entity
17 priority analysis and assumes illustrative
18 estimates of approximately 600 million and
19 9.0 billion of admin\priority and
20 contingent liability claims, respectfully,
21 as well as the additional \$1.4 billion of
22 other general unsecured claims."

23 MR. RENENGER: Object to the
24 form of the question. Just note that
25 was an incorrect reading. The word

1 BASTABLE

2 "the" should be "and."

3 MR. WALSH: Thanks for that
4 correction.

5 Q. Do you have an understanding
6 what that footnote refers to?

7 A. Yes. Generally.

8 Q. What does that refer to?

9 A. There would have been -- the
10 waterfall above only addresses the Alli
11 revolver and the JSNs in terms of their
12 recovery. There were other claims in this
13 case. Admin claims, unfortunately, we
14 were already anticipating were going to be
15 \$600 million, which is I mean costs,
16 generally costs of running ResCap and all
17 of the fees that were paid out during the
18 bankruptcy.

19 Q. What is the reference to
20 contingent liability claims?

21 A. And then the 9 billion, that I
22 believe would have been an estimate of
23 what the other claims in the case
24 primarily relating to the private label
25 so-called private label RMBS claims. And

1 BASTABLE

2 then also the claims relating to the
3 monoline contingent liabilities. And then
4 in addition to that there were 1.4 billion
5 of general unsecured claims which would
6 have been primarily unsecured notes but
7 I'm sure there were other smaller pools of
8 unsecured claims as well.

9 Q. Did you understand at this time
10 period that there was going to be a
11 separate PSA with the RMBS trustees or at
12 least some number of RMBS plaintiffs
13 settling their claims at approximately
14 \$8 billion?

15 MR. RENENGER: Object to the
16 form of the question.

17 A. We knew that that would be
18 required to get a planned confirmed.
19 So -- and we, I believe at that time we
20 were aware that there would have been, you
21 know, there had to have been some dialogue
22 with those parties. So yeah.

23 Q. And am I correct that this
24 analysis on the right side includes a
25 resolution of at least some portion of

1 BASTABLE

2 those RMBS claims?

3 MR. RENENGER: Just to clarify,
4 you are on the right of page 2 of 3
5 still?

6 MR. WALSH: I am.

7 A. Yes.

8 Q. And your understanding was that
9 it would not resolve all of the RMBS
10 claims, that settlement?

11 MR. RENENGER: Object to the
12 form of the question.

13 Q. Did you have an understanding of
14 the PSA with the RMBS plaintiffs did not
15 resolve all of the RMBS claims?

16 A. At this time?

17 Q. At this time, yes.

18 A. I'm not sure we knew enough to
19 know whether it would or would not resolve
20 all of those claims.

21 Q. Did you have an understanding
22 what the treatment would be in the
23 bankruptcy of the RMBS claims? Again, as
24 of this time period.

25 A. As of this time period. No, we

1 BASTABLE

2 did not know exactly how those claims
3 would be treated.

4 Q. Why not?

5 A. Again, those claims arose from
6 various subsidiaries of ResCap. And the
7 company had never disclosed which entities
8 they had arisen and, therefore, we didn't
9 know enough to have a view as to where
10 those claims would sit in the company's
11 corporate structure.

12 Q. When did you first become aware
13 of the treatment of the RMBS claims in the
14 PSA, the May PSA, May 2012 PSA?

15 A. Well, I think right around the
16 petition date there was a disclosure that
17 the debtor had reached an agreement with
18 the private label RMBS holders. So at
19 least at that point we knew what that
20 headline number was. We did not know the
21 specifics of the proposal beyond that.

22 Q. And you did not terminate your
23 PSA based on the information that was
24 provided regarding the RMBS?

25 A. No, we didn't.

1 BASTABLE

2 MR. RENENGER: Object to the
3 form of the question.

4 Q. As of that time period.

5 You learned of the RMBS PSA, you
6 did not terminate your PSA based on the
7 RMBS PSA?

8 A. We didn't. But we specifically
9 included language in the PSA that
10 protected us from any economic impact
11 associated with that settlement. So
12 basically the debtors made a rep that the
13 RMBS settlement would not have an economic
14 effect on the recoveries for the JSNs.

15 Q. What was your understanding of
16 what an economic effect would be?

17 A. Meaning that it wouldn't impact
18 the timing or the dollar amount of our
19 recoveries.

20 MR. WALSH: This will be DK-12.

21 (DK Exhibit 12, e-mail chain,
22 marked for identification, as of this
23 date.)

24 Q. DK-12 is an e-mail from Dennis
25 Prieto, dated June 26, to a number of

1 BASTABLE

2 people, including yourself, Mr. Bastable,
3 correct?

4 A. Yes.

5 Q. And you received this e-mail on
6 June 26, 2012?

7 A. Um-hmm.

8 Q. And the e-mail attaches a letter
9 from Mark Brodsky. Who is Mark Brodsky?

10 A. Per this and my knowledge, Mark
11 is the chairman of Aurelius Capital
12 Management, LP.

13 Q. Were you familiar with Aurelius
14 prior to this date?

15 A. Yes.

16 Q. How were you familiar with them?

17 A. They were another hedge fund.
18 They are involved in some of the same
19 types of investment strategies as we are.
20 So I have gotten to know them over the
21 years from being involved in other
22 situations alongside them.

23 Q. In what other situations?

24 A. You know, there's been a number
25 of them over the years. One recent one

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was we were both creditors of a company called Vitro. But we have probably been involved in dozens of cases or certainly a large number of cases together over the years.

Q. Were you involved in the Adelphia case?

A. I was not.

Q. Were you involved --

A. Well, excuse me. And when I say I personally was not.

Q. Was the firm --

A. DK did have exposure to Adelphia. But it would have -- I did not have any direct involvement in that case.

Q. Ultimately Aurelius became a member of the ad hoc group, correct?

A. That's right.

Q. Are you aware of any other ad hoc groups formed in connection with distressed situations in which both DK and Aurelius were members?

A. Yeah. For example, Vitro was one. But there would have been others.

1 BASTABLE

2 Q. Do you know the others?

3 A. I wouldn't want to give you a
4 list of them because it wouldn't be a
5 comprehensive one. But it could be a
6 reasonably large number, although not, not
7 dozens but certainly it could be in the
8 double digits, over -- over a long period
9 of time.

10 Q. Can you give me some names of
11 names you remember?

12 MR. RENENGER: I'm going to
13 object to the question as beyond the
14 scope. I'm not sure how this relates
15 to the topics that are, that have been
16 noticed. Do you want to make a
17 representation along those lines?

18 MR. WALSH: I'm asking about the
19 ad hoc group and this is a connection
20 with -- Aurelius is a member of the ad
21 hoc group so I think I'm entitled to
22 ask if there had been prior
23 relationships.

24 MR. RENENGER: He answered that.

25 MR. WALSH: If he can remember

1 BASTABLE

2 three or four names.

3 Q. Three or four bankruptcies or
4 distressed situations where both Aurelius
5 and DK have been members of an ad hoc
6 group?

7 A. One of the reasons I'm
8 hesitating here is that there's situations
9 we may have been involved with where we
10 were on an ad hoc group. I don't know if
11 they would have been on the ad hoc group.
12 I just don't want to -- I don't want to go
13 there because I think it would be quite
14 easy to misremember whether we were both
15 participating. Vitro is a relatively
16 recent one where we were both on an ad hoc
17 group together.

18 Q. Let's look at DK-11 and the
19 letter that Mr. Brodsky sent.

20 MR. RENENGER: DK-12.

21 Q. We, thank you. Did you read
22 this letter when you received it?

23 A. Yes.

24 Q. Is it your understanding the
25 letter was addressed to the ad hoc group?

1 BASTABLE

2 A. It is addressed to the ad hoc
3 group.

4 Q. And if you look at the cover
5 letter, there are members of the ad hoc
6 included in the cover e-mail?

7 A. Yes.

8 Q. Mr. Brodsky refers in the fourth
9 full paragraph to an ad hoc group's
10 May 14, 2012, presentation. Is that the
11 Houlihan presentation we previously looked
12 at?

13 MR. RENENGER: Object --

14 Q. Well, let me ask another
15 question. Which, if either, of the
16 Houlihan presentations is that referring
17 to, if you know?

18 A. I don't know.

19 Q. If you see the one, and I don't
20 remember that exhibit number but is that
21 11?

22 A. Yes.

23 Q. DK-11 is dated May 14th. Do you
24 have any reason to question that that is
25 in fact what Mr. Brodsky is referring to?

1 BASTABLE

2 A. No.

3 Q. You see Mr. Brodsky writes in
4 that paragraph, "We believe the secured
5 notes are substantially oversecured,
6 hence, would be entitled to post petition
7 interest for 2012 and beyond in the
8 absence of the PSA."

9 What was your understanding of
10 that statement?

11 A. I'm sorry. Could you repeat
12 that.

13 Q. The last sentence I read is the
14 sentence beginning "Indeed." Do you see
15 that sentence?

16 A. Yes.

17 Q. What is your understanding of
18 that sentence?

19 A. I guess it's somewhat
20 straightforward, right. That they believe
21 that there was enough value to cover our
22 notes plus prepetition interest as of the
23 petition date and presumably post petition
24 interest and that if the PSA didn't exist,
25 that we would be entitled to recover that

1 BASTABLE

2 through the bankruptcy process.

3 Q. And is it your understanding
4 Mr. Brodsky was challenging the ad hoc
5 group's decision to waive post petition
6 interest, at least through December 31,
7 2012?

8 MR. RENENGER: Object to the
9 form of the question.

10 Q. Is that your understanding?

11 A. You can read this letter. I
12 think it speaks for itself.

13 Q. What was your understanding as
14 to Mr. Brodsky's position regarding post
15 petition interest?

16 A. He believed that the JSNs were
17 entitled to full or would be entitled to
18 full post petition interest and was laying
19 out the case for that in this letter.

20 Q. If you'll turn to the second
21 page, there's a heading entitled
22 Intercompany Claims. Take your time and
23 read that.

24 A. (Witness reviews document.)

25 Yeah.

1 BASTABLE

2 Q. Mr. Brodsky is identifying the
3 intercompany receivables as a potential
4 collateral source?

5 A. Right.

6 Q. And you said you were aware of
7 that prior to entering the PSA, yes?

8 A. Yes.

9 MR. RENENGER: Object.

10 Q. He references the last ResCap
11 consolidating financials made public in
12 2009. Do you know what he's referring to
13 there?

14 A. I do know in general what this
15 would be referring to, which would have
16 been that there would have been financials
17 that would have broken out individual
18 ResCap entities as opposed to a single
19 balance sheet for ResCap as a whole.
20 So -- but I couldn't speak to the exact
21 disclosure in those financials.

22 Q. Do you know if anyone from DK
23 reviewed those financials at or around --
24 at or before the date of the PSA?

25 A. I think it's very likely we did.

1 BASTABLE

2 Q. Do you know one way or other?

3 A. I can't definitively say. But
4 again, I'm almost positive we did review
5 those financials.

6 Q. Mr. Brodsky writes, "The
7 intercompany claims are not counted in the
8 Presentation." Does that refresh your
9 recollection whether intercompany claims
10 are included in the waterfall analysis
11 that we looked at previously in DK-11?

12 A. Can you repeat the question?

13 Q. Mr. Brodsky writes that "The
14 intercompany claims are not counted in the
15 Presentation," capital P presentation,
16 which is DK-11 we referred to earlier.
17 Does that refresh your recollection that
18 in the waterfall analysis the intercompany
19 claims are not included?

20 MR. RENENGER: Object to the
21 form of the question. I don't believe
22 he needed his memory refreshed on
23 that. He stated that affirmatively
24 before. Go ahead.

25 Q. I'll let you testify. Is your

1 BASTABLE

2 understanding --

3 A. Yes. That exhibit, DK-11, does
4 not include recoveries from the
5 intercompany claims.

6 Q. If you turn to page 3 of the
7 Brodsky letter, there's a heading Alli
8 Settlement Proceeds. I'll let you read
9 that and let me know when you are ready to
10 answer the question.

11 A. Okay.

12 Q. What is Mr. Brodsky referring to
13 there?

14 MR. RENENGER: Object to the
15 form of the question.

16 Q. If you know. What's your
17 understanding of what that paragraph
18 addresses?

19 A. He's talking about again,
20 obviously he's talking about the Alli
21 settlement and he has concerns about the
22 fact that it appears that unsecured bond
23 holders are going to benefit from a
24 portion of the proceeds put into the
25 estate by Alli to satisfy potential legal

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actions or, you know, potential avoidance
of ResCap transfers to Alli.

Q. Did you have an understanding
before this letter whether causes of
actions against Alli constituted
collateral to the JSNs?

MR. RENENGER: I'm just going to
admonish the witness to the extent
that any answer you give is based on
communications with counsel, I'll
instruct you not to answer. But based
on otherwise, you are free to answer.

A. Yeah. I think this area gets
into privilege. It would have been an
analysis that would have been privileged
because it was almost entirely based on
legal analysis that our counsel did.

Q. Taking that into account, can
you tell me when was the first time that
you became aware that causes of action
against Alli could be collateral to the
JSNs?

MR. RENENGER: Same instruction
but --

1 BASTABLE

2 A. I mean, I'll have to -- I don't
3 recall the exact date but I think -- but
4 again, around this time we were cognizant
5 of the fact that those -- that was
6 potentially a source of collateral value
7 for us.

8 Q. And was it around the June time
9 period or --

10 A. Earlier.

11 Q. When?

12 A. I don't remember the specific
13 date.

14 Q. Do you remember if it was before
15 or after you signed the PSA?

16 A. I believe before.

17 Q. How much before?

18 A. I don't recall.

19 Q. Again, I'm not asking for the
20 content of your communications but can you
21 tell me who provided you, who first told
22 you that there was the potential that
23 these causes of action could constitute
24 collateral for the JSNs?

25 A. Likely counsel. So I believe

1 BASTABLE

2 White & Case would have informed us.

3 Q. Do you recall specifically who
4 at White & Case?

5 A. No.

6 Q. Do you recall if this was an
7 oral communication or if there was a
8 written memorandum on the subject?

9 A. I don't recall if there was a
10 written memorandum. There certainly would
11 have been oral communication, but I don't
12 recall if there was a written memorandum
13 on the subject.

14 Q. Mr. Brodsky on the last page
15 writes, "We are truth seekers so we
16 welcome whatever correction this letter
17 deserves." Did you have any discussions
18 with Mr. Brodsky after this letter was
19 sent regarding the letter?

20 A. The counsel for the ad hoc group
21 would have had discussions with
22 Mr. Brodsky about the contents of this
23 letter.

24 Q. That's White & Case?

25 A. At the time -- well, no, Milbank

1 BASTABLE

2 at this point I think.

3 Q. When did Milbank first become
4 involved?

5 A. When J.R. Uzzi moved from White
6 & Case to Milbank, which was sometime, I
7 believe, in late -- actually, no, this
8 would have still been -- sorry, that would
9 have been a subsequent date.

10 Q. I believe Mr. Uzzi moved firms
11 at the end of 2012.

12 A. Yeah. I was confused about the
13 date.

14 Q. So still White & Case?

15 A. Still White & Case.

16 Q. Did you have any discussions
17 outside the presence of White & Case with
18 Mr. Brodsky about this letter, after it
19 was sent?

20 A. I believe Mr. Brodsky called me
21 to let us know, to let me and our firm
22 know that this letter was coming and would
23 have at that point described at a very
24 high level why he was sending it to the
25 group.

1 BASTABLE

2 Q. What did he tell you?

3 A. It was a short conversation,
4 effectively saying, you know, we believe
5 that the JSNs are oversecured and you
6 should not be agreeing to a deal that
7 would give up any of your post petition
8 interest. And then would let the letter
9 obviously provide the details that it does
10 regarding the specifics of his position.

11 Q. What was your understanding of
12 what he meant by a deal? Was he referring
13 to the PSA or?

14 A. Yes.

15 Q. Was he asking you to terminate
16 the PSA?

17 A. No.

18 Q. What was he asking?

19 A. Well, he wasn't asking anything.
20 He was just putting us on notice that this
21 letter was coming.

22 (DK Exhibit 13, series of
23 e-mails, Bates DK 233, marked for
24 identification, as of this date.)

25 Q. This is DK-13. It's Bates

1 BASTABLE

2 stamped DK 233. A series of e-mails dated
3 July 3rd, 2012. This is an e-mail that
4 you received, Mr. Bastable?

5 A. Yes.

6 Q. This is from Mr. Brodsky?

7 A. Yes.

8 Q. And Mr. Brodsky is referring to
9 the bankruptcy schedules that ResCap
10 released around this time period?

11 A. Right.

12 Q. And what did those bankruptcy
13 schedules disclose?

14 A. I think the relevant thing
15 they -- there would have been a lot that
16 it disclosed, but the relevant thing was
17 that it would have deconsolidated balance
18 sheets for the rep -- for the ResCap
19 entities.

20 Q. Prior to this date, though, the
21 ad hoc group had some trial balances that
22 were reflected in the company receivables,
23 correct?

24 MR. RENENGER: Object to the
25 form of the question.

1 BASTABLE

2 Q. You referenced that Houlihan
3 received certain balance sheets from
4 guarantors. That would have shown
5 intercompany receivables, correct?

6 A. Yeah, I mean -- we just want to
7 make sure that we are distinguishing when
8 we get into these issues between our
9 advisors and the ad hoc group.

10 Q. Thank you. Houlihan, at least
11 prior to this time, had that some
12 information on intercompany receivables?

13 A. Yes.

14 Q. When was the first time the ad
15 hoc group received information regarding
16 ResCap's intercompany receivables?

17 A. The -- again, Houlihan presented
18 us with some estimate of recoveries I
19 think relating to intercompany
20 receivables, but we would not have
21 received specifics in terms of seeing the
22 balance sheets of these entities until --
23 I believe until these schedules were
24 published.

25 Q. Well, you knew a ballpark

1 BASTABLE

2 number, right? You testified earlier
3 about something north of 500 million,
4 correct? You knew there were substantial
5 intercompany receivables?

6 A. Yes. And I did not testify that
7 it was necessarily a number north of 500
8 million, but we did think there was
9 potentially substantial value in the
10 intercompanies.

11 Q. He refers to, Mr. Brodsky refers
12 to 30 bond points. What is he referring
13 to there, if you know?

14 A. He's talking about bond points
15 relative to the face amount of JSNs, which
16 call it 2 billion, slightly more than
17 that, 2.1 billion. So 30 bond points
18 would be 30 percent of that number.

19 Q. How would that relate to the
20 price of the notes?

21 A. The price of the notes?

22 Q. Right. We talked about, you
23 know, you bought these notes somewhere in
24 the neighborhood of \$0.60?

25 A. The first purchase.

1 BASTABLE

2 Q. First notes. You had subsequent
3 purchases I assume at higher numbers?

4 A. Yes.

5 Q. How would the 30 points relate
6 to --

7 A. Yeah, it would be the same --
8 effectively the same manner of speaking.
9 Meaning he would be talking about
10 something that would be \$0.30 on the
11 dollar effectively.

12 Q. And do you know how he
13 calculated 30 bond points as they related
14 to the intercompany receivables? Was that
15 something you and he discussed?

16 A. We did not discuss it, no.

17 Q. Do you know if he had that
18 discussion with White & Case?

19 A. I don't know if he had that
20 specific discussion with White & Case.

21 Q. There's a reference to a meeting
22 of principals. And you forward the e-mail
23 to Ms. Tirschwell and Mr. Shah. Do you
24 know if there was a meeting of principals
25 after this e-mail, as it relates to these

1 BASTABLE

2 issues?

3 A. I don't believe there was. I
4 don't believe there was.

5 Q. Was there a meeting between
6 Mr. Brodsky and the Aurelius people and
7 White & Case?

8 A. I think very likely there
9 certainly would have been communication
10 between them.

11 MR. WALSH: This will be 14.

12 (DK Exhibit 14, series of
13 e-mails, marked for identification, as
14 of this date.)

15 Q. DK-14 is an e-mail from Dennis
16 Prieto dated July 5th, 2012, to you and
17 others, Mr. Bastable, correct?

18 A. Yes.

19 Q. And you received this e-mail on
20 July 5th?

21 A. Yes.

22 Q. Attaching Mr. Brodsky's letter?

23 A. Yes.

24 Q. And this letter is addressing
25 the intercompany receivables, correct?

1 BASTABLE

2 A. Yes.

3 Q. And again, Mr. Brodsky has
4 provided an analysis of the effect of
5 these receivables on the collateral value,
6 correct?

7 A. Yes.

8 Q. He's estimated 64 to 72 bond
9 points of collateral value?

10 A. Yes.

11 Q. Did you have a position at the
12 time of this letter whether that was an
13 accurate estimate?

14 A. We did do some independent
15 analysis to verify their claims. I think
16 that analysis concluded that it was very
17 likely that there was, and probably more
18 likely than we thought before, substantial
19 value to the intercompany claims. But I'm
20 not sure that our analysis completely
21 agreed with their analysis. But we did
22 come to a conclusion that there was --
23 there was very likely substantial value of
24 the intercompany claims.

25 Q. What was the result of your

1 BASTABLE

2 analysis as it relates to bond points?

3 A. I don't recall, specifically.

4 Q. Was it in the neighborhood of 64
5 to 72 points?

6 A. We were coming up with a
7 slightly lower number.

8 MR. RENENGER: John, could you
9 just clarify who the "we" is there, ad
10 hoc group or --

11 MR. WALSH: I'm focused on DK.

12 A. This would have been an analysis
13 that DK was doing independently.

14 Q. Do you know if the ad hoc group
15 was doing a separate analysis of the
16 intercompany receivables?

17 A. There were certainly
18 conversations with our advisors about
19 them. And obviously there was additional
20 public disclosure. So yes, there would
21 have been some -- there would have been
22 some additional thought given to the value
23 of intercompanies at this time.

24 Q. Do you know what, if anything,
25 were the results of the ad hoc group's

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analysis as it relates to bond points?

MR. RENENGER: I'll interpose an objection only to instruct the witness that to the extent he can only answer that question by relying on work product delivered by advice to the ad hoc group, I'll instruct you not to answer. But to the extent you can answer without getting into privileged information, you may do so.

THE WITNESS: Right.

Q. Can you answer the question without getting into privileged information?

A. I don't think it would be possible to answer, give you number. If that number was provided to us, it would be something that Houlihan would have provided.

Q. Mr. Brodsky goes on to talk about the proposed RMBS settlement. Do you see that in the letter?

A. Where are you specifically referring to?

1 BASTABLE

2 Q. The last full paragraph, last
3 two sentences.

4 A. On the first page.

5 Q. On the first page.

6 A. Yes.

7 Q. Did you have an understanding
8 before this letter that the settlement
9 with the RMBS trusts and the monoline
10 insurers would not be subordinated
11 pursuant to bankruptcy section 510?

12 MR. RENENGER: And again, I'm
13 going to instruct the witness to the
14 extent that his answer would call for
15 privileged information not to answer
16 that. But of not, he can answer it.

17 A. I think that was based on the
18 advice of counsel.

19 Q. I can ask whether you had a
20 position one why are the other. I won't
21 get into the content with the
22 communication with counsel. Did you know
23 one way or other how the RMBS settlement
24 and monoline settlements would be treated
25 under 510 prior to this --

1 BASTABLE

2 MR. RENENGER: I think that
3 calls for a yes or no answer, so if
4 you can limit your answer.

5 A. I'm a little confused as to what
6 the -- what is the question you are asking
7 me?

8 Q. Let me rephrase. Mr. Brodsky
9 has made a point here about whether the
10 settlements or the claims related to these
11 settlements should or should not be
12 subordinated.

13 A. Right.

14 Q. You have an understanding what
15 subordinated means?

16 A. Yeah.

17 Q. Is this the first time that you
18 are aware of that issue or were you aware
19 of that issue prior to the letter?

20 A. I was aware of that issue prior
21 to the letter.

22 Q. When was the first time you
23 became aware of the issue of subordination
24 as it relates to the RMBS and monolines
25 claims?

1 BASTABLE

2 A. I don't recall the exact date.

3 Q. Was it before or after you
4 signed the PSA?

5 A. Honestly, I don't recall.

6 Q. And again, I'm not asking you to
7 disclose the content but do you recall who
8 provided you with the first notice of this
9 issue? Was it White & Case?

10 A. Most likely.

11 Q. Do you recall who at White &
12 Case?

13 A. No.

14 Q. Do you recall if it was an oral
15 communication or if it was in writing?

16 A. I don't, I don't recall.

17 Q. Do you recall at the time of the
18 PSA, signing the PSA, how the RMBS
19 settlement would be treated under the
20 bankruptcy code? Was it received in a
21 general unsecured claim or something else?
22 And I understand you didn't see it
23 until -- I understand the timing of when
24 you saw that document. But do you recall
25 appreciating at the time of that document

1 BASTABLE

2 in May how the RMBS settlement would be
3 treated in the bankruptcy?

4 A. I think that's a broad question.

5 Q. Do you recall specifically
6 whether it would be -- knowing one way or
7 the other whether it would be subordinated
8 or whether it would be treated as a
9 general unsecured claim?

10 A. I believe my understanding at
11 that time was that those claims were not
12 going to be subordinated under 510B.

13 Q. What effect, if any, would the
14 fact that the claims were not subordinated
15 have on the recoveries of the JSNs?

16 A. Well, again, per the PSA they
17 were repping that they would have no
18 effect on the recoveries for the JSNs.

19 Q. Did you have an understanding
20 that there was at least a potential that
21 the settlement, the RMBS settlement could
22 have an effect on JSN recoveries?

23 A. If the debtor wanted to breach
24 that rep, then presumably it could have
25 had an effect on us. Or conversely if it

1 BASTABLE

2 had an affect on us, that would have been
3 a breach of the rep and allowed us to walk
4 away from the PSA. So that was a -- I
5 mean that was a key component of the PSA
6 for us, was ensuring that whatever deal
7 got cut with the RMBS holders was not
8 going to have an economic impact on the
9 deal that we agreed to under the PSA.

10 Q. And you are aware of the
11 subordination issue, at least as of the
12 time of the July 5th letter?

13 MR. RENENGER: Object to the
14 form of the question.

15 Q. You are aware that these claims
16 were not going to be subordinated, at
17 least by the time of the July 5th letter?

18 MR. RENENGER: Object to the
19 form of the question.

20 Q. We were trying to fix a time
21 when you first became aware of the issue,
22 at least by July 5th?

23 A. Yes.

24 Q. At some point prior?

25 A. Yeah.

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BASTABLE

MR. WALSH: Take a quick break.

A. Sure.

(Whereupon, there is a recess in
the proceedings.)

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BASTABLE

A F T E R N O O N S E S S I O N

(Time noted: 1:01 p.m.)

C O N O R B A S T A B L E, resumed and
testified as follows:

EXAMINATION BY (Cont'd.)

MR. WALSH:

Q. Mr. Bastable, we are back on the
record. You understand you are still
under oath?

A. Yes.

Q. We were talking about the RMBS
claims prior to the break. Were you aware
that there were RMBS claims at the time or
was DK aware of the RMBS claims at the
time of DK's initial investment in ResCap
notes?

A. Some of these claims would have
really arose -- I'd have to -- I honestly
don't recall whether or not we were aware
at that point in time.

Q. Do you recall if the investment
memos that you mentioned earlier were
reference -- did reference?

A. I'm not sure.

1 BASTABLE

2 Q. -- those claims?

3 A. I'm not sure.

4 Q. What due diligence, if any, did
5 DK do in advance of signing the PSA with
6 respect to the RMBS claims?

7 A. We would have done somewhat
8 limited due diligence because it was just,
9 again, it was very opaque as to what
10 amounts would have been due to the RMBS
11 claimants. I think we did have -- we did
12 make an attempt based on some prior
13 settlements that other counterparties had
14 made with RMBS claim holders about what --
15 how the general framework might look like.
16 But we really didn't have enough
17 information to estimate it with a high
18 degree of specificity.

19 Q. Which prior settlements do you
20 refer to?

21 A. There had been -- well, in
22 particular, this may have been maybe more
23 applicable to the monolines where they had
24 reached settlements with other banks who
25 had rep and warranty settlements with

1 BASTABLE

2 other banks who had originated mortgages.

3 But the same framework might be applicable

4 or could be somewhat applicable for the

5 RMBS claimants.

6 Q. Let me ask the same question
7 about the ad hoc group. What due
8 diligence, if any, did the ad hoc group do
9 with respect to the RMBS claims prior to
10 the PSA?

11 A. Are you including advisors?

12 Q. Yes.

13 A. Although I can't speak to how
14 much analysis Houlihan did. Again, I
15 think the primary comfort we took
16 vis-à-vis the RMBS settlement was the
17 language in the PSA that protected us from
18 any economic harm associated with that
19 settlement.

20 Q. Would you pull the PSA and point
21 me to that language?

22 A. It's on page 14 under the 7.1,
23 which is the termination events section.

24 Q. Item L?

25 A. Item L, approving any settlement

1

BASTABLE

2

of any contingent or disputed liability or

3

allocating -- or allocating proceeds to be

4

paid pursuant to the Alli settlement

5

agreement in a manner which would

6

materially or -- and adversely affect the

7

recoveries of consenting holders.

8

Q. But with respect to the RMBS

9

settlement you are referring to Romanette

10

one?

11

A. Yes, I am.

12

(DK Exhibit 15, e-mail chain

13

dated May 11th entitled, ResCap

14

Steering Committee Plan Term Sheet,

15

marked for identification, as of this

16

date.)

17

Q. There was a plan term sheet that

18

was attached to the PSA, correct?

19

A. Yes.

20

Q. And that term sheet provided for

21

how claims would be treated in the

22

bankruptcy?

23

A. Yeah. Do I have that term sheet

24

here?

25

Q. We will make that the next

JSN Objection
130:20-24:
FRE 1002
(Best evidence)

1

BASTABLE

2

exhibit.

3

(DK Exhibit 16, plan term sheet

4

attached to the PSA, marked for

5

identification, as of this date.)

6

MR. WALSH: Just so we have a

7

clear record, 15 is an e-mail chain

8

dated May 11th entitled, ResCap

9

Steering Committee Plan Term Sheet.

10

16 is the plan term sheet that was

11

attached to the PSA.

12

Q. Do you recognize 16?

13

A. Yes.

14

Q. When was the first time you saw

15

a draft term sheet?

16

A. I assume it was prior to signing

17

the PSA. Probably in the days or low

18

number of weeks before that.

19

Q. And if you look at 15, I see you

20

are not on this e-mail chain, but Mr. Shah

21

is one of your colleagues, correct?

JSN
Objection
131:19-22:
FRE 611(a)
(Compound)

22

A. Yes.

23

Q. As well as Ms. Tirschwell?

24

A. Yes.

25

Q. That's Mr. Ephraim?

1 BASTABLE

2 A. Mr. Diamond, yeah.

3 Q. All three of these individuals
4 were working at DK in connection with the
5 ResCap investments?

6 A. Yes.

7 Q. And they received a draft term
8 sheet on or about May 11th?

9 A. Yes.

10 Q. Do you know if that was the
11 first term sheet that was circulated, the
12 one on May 11th?

13 A. I don't.

14 Q. At some point you saw that the
15 RMBS claims were not subordinated in the
16 plan that was proposed in connection with
17 the PSA, the May PSA?

18 MR. RENENGER: Object to the
19 form.

20 Q. We talked earlier about
21 subordination?

22 A. Yes.

23 Q. At some point you determined
24 that these RMBS claims were not going to
25 be subordinated?

JSN Objection
132:20 -133:6:
FRE 602 (Lacks personal
knowledge, calls for
speculation)

JSN Objection
132:23 -133:6:
FRE 611(a) (Vague and
ambiguous)

1 BASTABLE

2 A. Yes.

3 Q. Do you recall when the first
4 time was that you realized that?

5 A. It was prior to us signing the
6 PSA.

7 Q. Do you know if Houlihan did any
8 analysis of the RMBS claims in connection
9 with the prepetition PSA?

10 MR. RENENGER: I'm just going to
11 go ahead and instruct the witness as
12 before. To the extent you can answer
13 that yes or no, that's fine. To the
14 extent you can't and the answer would
15 otherwise divulge privileged
16 discussions, I instruct you not to
17 answer.

18 Q. If you can, answer the question
19 yes or no.

20 A. I don't know.

21 Q. Had you worked with Houlihan
22 prior to this engagement?

JSN Objection
FRE 402 (Not relevant)

23 A. Yes.

24 Q. Had you worked with the
25 individuals at Houlihan prior to this

1

BASTABLE

2

engagement, the same individuals?

3

A. Which individuals are you

4

referring to?

5

Q. Who are the individuals that

6

worked on this engagement, to your

7

knowledge?

8

MR. RENENGER: Object to the

9

form.

10

A. Eric Siegert was the senior most

11

individual. And then there would have

12

been a fairly large team of people who

13

would have worked for him.

JSN Objection
134:10-135:15
FRE 402 (Not relevant)
FRE 602, 701, 702
(Lacks foundation, calls
for expert opinion)

14

Q. Had you worked with Mr. Siegert

15

prior to this?

16

A. Yes. We as a firm had worked

17

with him on transactions prior to this.

18

Q. How many?

19

A. I couldn't tell you.

20

Houlihan -- what's that? I mean, we have

21

been involved in dozen of bankruptcies.

22

Houlihan is the largest creditor financial

23

advisory firm. So it would be -- that

24

would be in the dozens of transactions.

25

Q. What is the number for, the

1

BASTABLE

2

number of transactions that Mr., you've

3

worked with Mr. Siegert on?

4

A. I couldn't tell you. But he is

5

a very senior member of the Houlihan

6

restructuring and financial advisory

7

group. So I'm sure he had involvement in

8

a number of those transactions.

9

Q. And he's an expert in this case,

10

correct?

11

A. He is.

12

Q. And you have no question -- you

13

have no reason to question his

14

qualifications or competence?

15

A. No.

16

Q. You had full confidence in his

17

ability and the abilities of the Houlihan

18

team in connection with their analysis

19

prior to the prepetition PSA?

20

MR. RENENGER: Object to the

21

form.

22

Q. Let me rephrase. You had no

23

reason to question Mr. Siegert's

24

competence in connection with providing

25

financial advice to the ad hoc committee

JSN Objection
135:22-136:6
FRE 402 (Not relevant)
FRE 602, 701, 702 (Lacks
foundation, calls for
expert opinion)

1

BASTABLE

2

prior to signing the prepetition PSA?

3

A. I did not.

4

Q. And you've had not had any

5

reason to question his competence since

6

signing the PSA?

7

MR. RENENGER: Object to form.

8

A. I mean, I have not.

9

Q. Is there any reason today that

10

you would have any reason to question

11

Mr. Siegert's competence and abilities as

12

a financial advisor?

13

A. No.

14

Q. And I'll ask the same question

15

about Houlihan as a firm. At the time of

16

the PSA, you had no reason to question

17

Houlihan's competence as a financial

18

advisor in connection with the work they

19

did for ResCap?

20

A. No.

21

Q. And today you have no reason to

22

question Houlihan's competence and

23

abilities with respect to providing

24

financial advice to the ad hoc group?

25

A. I do not.

JSN Objection
136:8-136:25
FRE 402 (Not relevant)
FRE 602, 701, 702
(Lacks foundation,
calls for expert
opinion)

1 BASTABLE

2 (DK Exhibit 17, e-mail from
3 Mr. Shah to Mr. Bastable dated
4 July 5th, marked for identification,
5 as of this date.)

6 Q. DK-17 is an e-mail from Mr. Shah
7 to you, Mr. Bastable, dated July 5th. Is
8 this in connection with the July 5th
9 Brodsky letter we looked at earlier?

10 A. It appears to be, yes.

11 Q. Mr. Shah writes, "The interco
12 and pledge analysis is correct." Do you
13 understand that he's referring to the
14 Brodsky letter and analysis in that
15 Brodsky letter?

16 A. Yes.

17 Q. He continues, "I don't know
18 exactly how they get to their bond PT
19 contribution." Do you know what Mr. Shah
20 is referring to there?

21 A. Yeah. This is the same concept
22 we were talking about before. PT means
23 points here. So he's, again, referring to
24 the number of bond points that Aurelius
25 believed were attributable to the

1 BASTABLE

2 intercompanies.

3 Q. He writes, "Appears to assume
4 limited or no contingent claims and no
5 impairment to stated book values." What's
6 your understanding of that sentence? What
7 is he referring to?

8 A. Again, this may not be exactly
9 what he's referring to, but I will give
10 you a sense of what I think he's talking
11 about, was as we've talked about the RMBS
12 claims would have been a contingent claim
13 in this case and then book value wouldn't
14 necessarily tie to market value associated
15 with individual assets. Although as we
16 have seen with the purchases by Fortress
17 sometimes market value can exceed book
18 value.

19 Q. And at this point DK knew the
20 amount of the RMBS claims that were going
21 to be settled as part of bankruptcy?

22 MR. RENENGER: Object to the
23 form of the question.

24 Q. There was a PSA with respect to
25 the RMBS claims that settled them for

1 BASTABLE

2 approximately \$8 billion, correct?

3 A. Yes.

4 Q. But Mr. Brodsky's analysis does
5 not consider those claims?

6 MR. RENENGER: Object to the
7 form.

8 Q. Mr. Brodsky's analysis does not
9 take into account those claims?

10 A. Yeah. Well, it says limited or
11 no contingent claims. So I don't want to
12 say that they weren't taking them into
13 account. But perhaps we had a different
14 view as to the impact of those claims.

15 Q. And your view was that
16 Mr. Brodsky was taking a limited view of
17 the claims? DK's view was that
18 Mr. Brodsky was taking a limited view of
19 the claims, the contingent claims?

20 MR. RENENGER: Object to the
21 form.

22 A. Yeah, that appears to be what
23 this says.

24 MR. WALSH: This is 18.

25 (DK Exhibit 18, Cantor

1 BASTABLE

2 Fitzgerald analyst report, marked for
3 identification, as of this date.)

4 Q. Do you know who York Capital is,
5 Mr. Bastable?

6 A. Yes, I do.

7 Q. Are they one of the members of
8 the ad hoc committee as of July 2, 2012?

9 MR. RENENGER: Object to the
10 form.

11 A. I don't know, but I believe so.

12 Q. Do you know who Erin Andrews is
13 of Cantor Fitzgerald?

14 A. No.

15 Q. Did you receive analyst reports
16 in this time period from any analyst on
17 ResCap?

18 A. I'm sure we did.

19 Q. Do you recall which analyst
20 reports you would have received?

21 A. No.

22 Q. You see Ms. Andrews writes about
23 the intercompany claims, and at the end of
24 that paragraph, first paragraph, she
25 writes, "However, there's reason to doubt

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BASTABLE

some of the intercos." Do you know if there were discussions within the ad hoc committee questioning the value of the intercompany claims as of this time period?

A. Discussions between whom and whom?

Q. Any members of the ad hoc committee.

A. I can't speak to what conversations other people would have had.

Q. Were there any discussions within DK about the value of the intercompany claims as of this time period July 2012?

A. I think we have covered that. We did have discussions about what we thought the value of those intercompany claims were.

Q. Did you disagree that they were as valuable as Mr. Brodsky had assessed them to be?

A. We had a difficult time reconciling exactly how he got to the

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BASTABLE

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numbers he got to. But we actually did --

3

we believed that his analysis was right

4

with given all the facts that he had. It

5

was just how you then translate that into

6

the recoveries for the junior secured

7

notes was a challenging exercise because

8

we never had enough disclosure from the

9

debtor to do that comprehensively.

10

Q. Well, as of July you had

11

received the schedules, correct?

12

A. Yes.

13

Q. What other information did you

14

need to determine the value of the

15

intercompany claims?

16

A. I'd say it's a very complicated

17

analysis that would involve needing to

18

know the value of assets at each

19

subsidiary, what other claims would have

20

been at those subsidiary levels, either,

21

you know, actual or contingent. And as we

22

have discussed, there were some very large

23

contingent claims. And we did not know

24

what entities those claims were going to

25

be sitting at. Nonetheless, we did

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BASTABLE

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believe that there was a real potential

3

for there to be recoveries under the

4

intercompany claims and we felt strongly

5

that the intercompany claims were a part

6

of our collateral package.

7

Q. When did you first come to that

8

conclusion? You meaning DK.

9

A. I think since -- I think since

10

early on in our investment we had a view

11

that the intercompanies could have value.

12

That became more important once the

13

company filed for bankruptcy. But I think

14

from our getting involved in the

15

investment, we would have had some view

16

that there was -- that in the event of a

17

bankruptcy filing where it was necessary

18

to get recoveries from those

19

intercompanies that that was a potential

20

source of collateral for the JSNs.

21

Q. And you knew prepetition that

22

the security agreement provided for liens

23

on those intercompany claims?

24

A. That's right.

25

MR. WALSH: This is Exhibit 19.

JSN Objection
143:25-148:13
FRE 802 (Hearsay)
FRE 1002 (Best
evidence)

1

BASTABLE

2

(DK Exhibit 19, e-mail dated

3

July 10th from Bastable to himself,

4

marked for identification, as of this

5

date.)

6

Q. This is an e-mail dated

7

July 10th, Mr. Bastable. Is this an

8

e-mail that you sent to yourself?

9

A. It is.

10

Q. You write, "Intercompanies are

11

not as strong as you think." What were

12

you referring to there?

13

A. This was -- just to frame this,

14

right, we were in a position here where

15

Aurelius had obviously approached the

16

group with their view of what the

17

intercompanies were worth and what all

18

their collateral was worth. We knew the

19

debtors were taking a very different view

20

of that. We had signed up to the PSA with

21

the knowledge that our intercompanies were

22

potentially quite valuable or very

23

valuable. But we felt that the economic

24

deal that was offered under the PSA was a

25

good one because of the certainty we got

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BASTABLE

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from it and the speed with which we would

3

get our recoveries. It was not an

4

admission that we didn't think there was

5

recoveries under the intercompany notes.

6

It was just a business deal that we felt

7

was a good one for us so.

8

Q. With that context, what do you

9

mean when you write, "Intercompanies are

10

not as strong as you think"?

11

A. I think this gets back to our

12

view on what maybe the potential value of

13

the intercompanies was relative to what

14

Aurelius had articulated. We did think

15

there was real value to the intercompanies

16

or very likely to be really value

17

associated with the intercompanies but

18

perhaps not as much as Aurelius had

19

outlined in their letter.

20

Q. Who is the you in that sentence?

21

A. I believe that would have

22

referred to the position that Aurelius was

23

taking.

24

Q. You go on to write, "Other GUCs

25

where you might have to share value."

1

BASTABLE

2

What is that referring to?

3

A. That's GUC stands for general

4

unsecured claims. So again, as I was

5

talking about before, an analysis of the

6

value of not only intercompanies but any

7

deficiency claim you might have had would

8

be shared with potentially other

9

intercompanies at different entities

10

within ResCap.

11

Q. And was that a position that you

12

gave to Mr. Brodsky? I assume Aurelius

13

here you are talking to Mr. Brodsky or was

14

it somebody else?

15

A. I don't recall speaking with

16

Mr. Brodsky subsequent to this date about

17

this.

18

Q. The title of the e-mail is

19

ResCap MTG, which I assume is meeting,

20

with Aurelius?

21

A. Yeah.

22

Q. Were these notes that you took

23

from that meeting?

24

A. No. I think this was -- I think

25

this might have been in anticipation of a

JSN Objection
146:11-17 FRE
611(a)
(Compound)

1

BASTABLE

2

meeting that ultimately did not happen.

3

Q. So you were going to meet the

JSN

4

Aurelius folks and you wrote this down in

Objection

5

anticipation of that meeting?

147:3-6

FRE 611(a)

(Compound)

6

A. I believe that's what this was.

7

Q. Were these the statements that

8

you were going to make to the Aurelius

9

folks?

10

A. They were notes to myself about,

11

you know, what some of the issues we

12

wanted to talk with them about, what had

13

been in their letter.

14

Q. What do you mean when you write,

15

"Reattaching liens could be difficult"?

16

A. I don't recollect what that

17

specifically refers to.

18

Q. And last you write, "As long as

19

we like this deal." What are you

20

referring to there?

21

A. Yeah. I mean, as I was talking

22

about before we -- the PSA was, at its

23

core was a business deal. We had agreed

24

to give up post petition interest, our

25

right to post petition interest up through

1 BASTABLE

2 December 31. In exchange for that, Alli
3 was subordinating a part of their claim.
4 We were getting a cash collateral order,
5 adequate protection. Other benefits from
6 that deal that ensured we would get paid
7 quickly and with a high degree of
8 certainty. So I think I was beyond --
9 whether or not we thought the
10 intercompanies were worth 20 bond points
11 or 50 bond points, we still liked the
12 economic deal that we had cut under the
13 PSA.

14 Q. Would you have cut the deal if
15 the intercompanies were worth 100 points
16 to 112 points?

17 MR. RENENGER: Object to the
18 form of the question.

19 A. Yeah, I think that's hard to
20 answer.

21 Q. Was there any analysis by DK
22 prior to the prepetition PSA going through
23 that type of analysis if the
24 intercompanies are worth X amount, we may
25 ask for a different deal?

1 BASTABLE

2 A. We didn't -- our claim, even if
3 we were going to get all of our post
4 petition interest, obviously there's a
5 limit to how much we could potentially
6 recover. So at some point if the --
7 whether the intercompanies are worth 50 or
8 a hundred bond points is not particularly
9 relevant for us. So I'm not sure it would
10 have been made any difference in that
11 regard.

12 Q. Ultimately you made a decision
13 to terminate that prepetition PSA,
14 correct?

15 A. Yeah.

16 Q. And that decision was based on
17 the debtors' failure to reach milestones
18 that are set forth in that PSA?

19 A. Yes.

20 Q. That was the reason for the
21 termination?

22 A. Yes. It was the justification
23 for the termination.

24 (DK Exhibit 20, ResCap document,
25 marked for identification, as of this

1 BASTABLE

2 date.)

3 Q. In all seriousness, could you
4 just briefly tell us what Exhibit 20 is on
5 the first page?

6 A. Yeah. This is a portion of the
7 financial analysis that we would have put
8 together to analyze ResCap and probably
9 more specifically looks like, you know,
10 some of the specific assets on ResCap's
11 balance sheet and what those might be
12 worth for the JSNs.

13 Q. When was this prepared?

14 A. I don't --

15 Q. There's a date on the top right
16 corner of the first page.

17 A. Yeah. This says just to be
18 clear here, this says, "As of August 24,
19 2012." The way this date functioned would
20 work on a spreadsheet like this is
21 whenever it was printed out, it would have
22 that date on there. It does not reflect
23 when it was prepared necessarily.

24 Q. Do you know if there's -- are
25 you able to tell from the document or from

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BASTABLE

your memory when this was first prepared?

A. Well, it's just there are different parts of this. The first page shows the corporate structure of ResCap. Some of this was probably prepared before we made our first initial investment and then I would guess that as we got additional information regarding different entities within the corporate structure that this analysis was expanded. So it would not have all been together on any single date.

Q. There's some handwriting, forgive me if you mentioned this, is that your handwriting on the first page?

A. No, it's not.

Q. Do you know whose handwriting that is?

A. I don't.

Q. Do you know what the handwriting refers to?

A. I have a general sense that it is highlighting some of the intercompany assets or claims that run from various

1 BASTABLE

2 entities within ResCap.

3 Q. Would you turn to the page
4 ending 1086. Do you see the handwriting
5 on the bottom right?

6 A. Yes.

7 Q. Do you know whose handwriting
8 that is?

9 A. I don't.

10 Q. Can you read it?

11 A. Yes.

12 Q. What does this say?

13 A. It is says, "Unsecured
14 deficiency," and, I believe, "interco
15 claims."

16 Q. And the top of this page it
17 reads Aurelius Analysis. Is this an
18 analysis that Aurelius provided to DK?

19 A. No, it is not. It would have
20 been an analysis that we would have done
21 to vet some of what Aurelius had
22 represented in their letter.

23 Q. Is this testing the points
24 calculation?

25 A. Yes. It does appear that that's

1 BASTABLE

2 a part of this analysis.

3 Q. You understand that DK
4 terminated the prepetition PSA around the
5 same time period that other members of the
6 ad hoc group also terminated the
7 prepetition PSA. How did the ad hoc group
8 go about making that decision?

9 MR. RENENGER: Object to the
10 form.

11 Q. I'm just asking process. Not so
12 much reasons.

13 A. Right.

14 Q. You had said --

15 A. Okay. Sorry, go ahead.

16 Q. So with respect to the PSA, each
17 signing party obviously made its own
18 decision and signed the PSA.

19 A. Yes.

20 Q. It was independent, I assume.
21 Each of the entities that wanted to sign
22 it, signed it. Is it fair to say there
23 was no vote amongst the group, this is the
24 PSA let's all sign it?

25 A. Yes.

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BASTABLE

2

Q. What was that process with

3

respect to terminating the PSA. Was it an

4

individual assessment or was there a vote

5

among the members of the steering

6

committee or any other group of ad hocs

7

that deliberated over whether or not to

8

terminate and made a decision to

9

terminate?

10

A. I would not have been on the

11

calls directly, but I could say that there

12

would certainly have been discussions

13

about it. We knew we were within our

14

rights to terminate the PSA. It was very

15

clear that the company had not lived up to

16

several milestones. And there were also

17

several -- there were also other things

18

going on in the case that made it very

19

difficult for us to stay within the PSA.

20

For example, the unsecured committee had

21

filed a challenge to our liens. And it

22

was also clear at that point in time that

23

we were not going to get paid out anywhere

24

near as quickly as the debtor had

25

indicated when we signed up to the PSA.

1 BASTABLE

2 So a combination of those factors would
3 have led the group to discuss terminating
4 the PSA. I don't know if there was a
5 formal vote, but there would have been
6 some level of consensus.

7 Q. Who would know whether there was
8 a vote, if there was one?

9 A. Certainly our counsel and
10 whoever from, I think people from DK who
11 participated on those calls could tell you
12 if there was anything, any type of --

13 Q. Who are those people?

14 A. I would think Kunal Shah and
15 Sara Tirschwell and Ephraim Diamond.

16 Q. And the two factors that led to
17 the termination were failure to reach the
18 milestones and the creditor committee's
19 assertion challenging the liens?

20 MR. RENENGER: Object to the
21 form.

22 A. Those were major considerations.
23 I wouldn't say those were the only
24 considerations.

25 Q. At some point there was a second

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PSA proposed by the debtors with respect to the Alli claims and the RMBS claims. And that PSA has led to the current plan as proposed. Did the JSNs, did the ad hoc group of JSNs vote to determine whether they would object to the plan as proposed?

MR. RENENGER: Object to the form of the question. It's beyond the scope.

Q. You said one of the things you reviewed in connection with today's deposition was the objections by the ad hoc group to the plan as proposed?

A. Right.

Q. And those objections were filed recently in the last few weeks, correct?

A. Yes.

Q. Was there a vote by the ad hoc group regarding whether or not to make those objections?

A. Again, I don't know if there was a vote. I don't believe there was but there was a decision made that that was an appropriate objection to make.

1 BASTABLE

2 Q. Who made the decision?

3 A. It would have been --

4 MR. RENENGER: I'm going to
5 object to the form. Standing
6 objection to this line of questioning
7 as beyond scope, but I'm not going to
8 cut you off.

9 A. I think it's fair they would
10 have been the steering committee and
11 counsel for the committee.

12 MR. WALSH: Let me take a break
13 and see if I have any other questions.

14 (Whereupon, there is a recess in
15 the proceedings.)

16 A. Can I clarify one thing that you
17 had asked me previously?

18 Q. Sure.

19 A. Which is as it relates to the
20 vote to terminate the PSA. There was no
21 vote to the group. It was a decision, a
22 consensus-driven decision but there was no
23 vote to terminate.

24 Q. Was there anyone who was opposed
25 to terminating the PSA?

1 BASTABLE

2 A. The group reached consensus on
3 the issue.

4 Q. Let me ask about the mediation,
5 one of the topics you've been designated
6 on as the decision to not participate and
7 then to participate in the mediation.

8 Were you individually involved
9 in the decision not to participate in the
10 mediation initially?

11 MR. RENENGER: Object to the
12 form of the question.

13 A. I don't think we -- we as an ad
14 hoc group did not object to participating
15 in the mediation. We wanted to
16 participate in the mediation. And our
17 advisors did participate in the mediation.
18 We tried very hard to get an NDA signed in
19 substantially identical form to the NDA,
20 the NDA that was agreed upon to sign
21 the -- to get the PSA. But the debtor was
22 not willing to provide us with that form
23 of NDA. And as a result, it was
24 impossible for principals of the ad hoc
25 group to participate in the mediation. As

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BASTABLE

2

you know, Berkshire Hathaway, the largest

3

noteholder, did participate in the

4

mediation. So I don't think it's a fair

5

characterization to suggest that we

6

voluntarily did not participate in the

7

mediation.

8

Q. At some point did you ask the

9

court to enter an order that allowed ad

10

hoc group members to trade,

11

notwithstanding their involvement in the

12

mediation?

13

MR. RENENGER: Can I just get

14

you to clarify. When you say

15

mediation, just so the record is

16

clean, is there a particular session

17

you have in mind? My understanding it

18

was a prolonged and multiphase

19

process.

20

Q. Let's take it each step. At

21

some point there was -- Judge Peck was

22

appointed as mediator?

23

A. Yes.

24

Q. At that point in time did the ad

25

hoc group want to participate in

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BASTABLE

2

mediation?

3

A. We did.

4

Q. And what happened that prevented

5

the ad hoc group from initially

6

participating in mediation?

7

A. Like I said, the company was not

8

willing to provide us with an NDA. And

9

just to clarify why we needed the NDA,

10

obviously we are all investment firms with

11

fiduciary obligations to our investors and

12

you one of those is to be able to maintain

13

an ability to trade in securities. We

14

were all very willing to get restricted

15

for a period of time. We just needed an

16

ability to get unrestricted as some future

17

date. And again, that's exactly what the

18

NDA provided for when we negotiated the

19

PSA. But because the debtor wasn't

20

willing to provide us with a similar NDA,

21

it effectively prevented us from

22

participating in that mediation.

23

Q. Ultimately the ad hoc group

24

was -- did get involved in the mediation.

25

At what point in time was that?

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BASTABLE

2

A. That would have been -- where

3

are we now?

4

MR. RENENGER: November 1st.

5

A. The late summer, early fall of

6

this year.

7

Q. And what happened that allowed

8

the ad hoc group to participate in that

9

mediation?

10

A. Ultimately, Judge Peck was

11

willing to request and get signed an

12

order, which would have effectively

13

protected us from getting sued, I guess,

14

for trading on the basis of having

15

information relating to bids and asks that

16

would have been engaged in -- that would

17

have, you know, stemmed from that type of

18

negotiation to the extent that that

19

negotiation ultimately did not result in a

20

settlement.

21

Q. And it's your understanding that

22

that was the initial request of the ad hoc

23

group and that the debtor denied that

24

request?

25

A. The debtor denied our request.

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BASTABLE

2

We offered it up to, as we said you can --

3

we can get an NDA or we can get this

4

protective order. Either one would have

5

been acceptable to us. The debtor was not

6

willing to provide the NDA for some time.

7

There was not a willingness to provide the

8

protective order. We had Sara Tirschwell

9

from our office spoke directly with Gary

10

Lee about this issue and he said that he

11

thought Judge Peck would not provide this

12

order and he also said that they did not

13

need us to be involved in the mediation.

14

I know Dan Groper had several

15

conversations with Ken Eckstein on the

16

same issue, expressing repeated

17

willingness to sign an NDA, to engage in

18

negotiations, and we were told that we

19

were not needed at that time. So it

20

effectively prevented us from engaging in

21

the mediation.

22

MR. WALSH: That's all I have at

23

this time. I want to let counsel for

24

Wells Fargo ask the questions.

25

I just want to say on the record

1 BASTABLE

2 the ad hoc group is continuing to
3 produce documents. Actually, I
4 haven't received any documents yet.
5 We reserve the right to reopen this
6 deposition based on the production of
7 any DK relevant documents.

8 MR. RENENGER: I'll just put on
9 the record that Mr. Walsh is referring
10 to the production of the ad hoc group,
11 call it ad hoc group, not DK a member
12 of the ad hoc group. DK has completed
13 its production. And obviously to the
14 extent that there's an attempt to
15 redepose Mr. Walsh based upon the
16 production of the advisors to the ad
17 hoc group, we'd be happy to have that
18 discussion but we believe there would
19 be no need to.

20 EXAMINATION BY

21 MR. KOCHMAN:

22 Q. Good afternoon, Mr. Bastable.
23 My name is David Kochman. I represent
24 Wells Fargo in its capacity as third
25 private collateral agent, first priority

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BASTABLE

collateral agent in this case. All of the instructions that were applicable with respect to Mr. Walsh's examination are going to continue here. Do you understand that?

A. Yes, I do.

Q. And I want also to state right up front that I am not going to ask you any questions that require you or even ask you to divulge any conversations with counsel or any privilege conversations. So when I ask you a question, you should assume as part of the question that I am not asking you to disclose anything that would divulge a privilege conversation. Does that make sense?

A. Yes.

Q. Speaking about your experience generally, I believe you testified previously that the majority of your professional experience has been dealing with investments in distressed assets; is that right?

A. The professional experience at

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BASTABLE

Davidson Kempner has primarily dealt with that.

Q. In such capacity, have you had the opportunity to deal with the rights and responsibilities of trustees that oversee collateral in distressed situations?

MR. RENENGER: Object to the form of the question.

A. We have had -- I'm not sure I can answer that question directly. We have had, you know, we have had involvement with trustees in situations that I have been involved with at Davidson Kempner.

Q. Have you been involved in situations where a trustee has been responsible to hold collateral that accessed security for a DK position?

A. We have invested in securities where a trustee would have that general responsibility, yes.

Q. In such situations, do you have an understanding as to the trustee's

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BASTABLE

obligations vis-à-vis preservation of the
collateral?

MR. RENENGER: I'm going to
object to the form of the question.
And also just ask for a representation
about how this relates to the 30(b)(6)
topics or which one it relates to.

MR. KOCHMAN: Well, first off,
I'm going back through just his
experience. I want to get an
understanding as to foundationally
what his knowledge is respecting the
investment that DK was going into.

I think he said that there was
an evaluation of the documents
themselves and the position that DK
would be taking when it purchased
these notes. And then specifically I
think I am, this would fall under at
least the DK notice 3, 4, 8, 12, 13,
16 and potentially also the ad hoc
notice 34 and 35. That's just off the
top of my head so we obviously reserve
our right if it can be other things.

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BASTABLE

MR. RENENGER: Well, I hear the representation. I'll obviously give you leeway until I sort of see where it's going. But it's really hard for me to hear or understand how in any way a trustee's obligations to preserve collateral could relate to these topics he just covered, but we'll give you some leeway and see where it goes.

MR. KOCHMAN: Thank you.

Q. You want me to repeat the question?

A. Sure.

Q. What is your general understanding of a collateral agent's role in the context of holding collateral for, as security for notes?

MR. RENENGER: I'm going to instruct the witness that to the extent the answer to that question would require you to divulge advice of counsel that I would instruct you not to answer that. If you have an

1 BASTABLE

2 understanding away from that, then go
3 ahead.

4 A. I would rather not attempt to
5 answer that question.

6 MR. RENENGER: Is that based on
7 privilege?

8 Q. I think, look, I have given an
9 instruction at the outset that I'm not
10 asking you to divulge anything specific
11 with respect to counsel. You are here
12 today testifying on behalf of DK as their
13 corporate representative; is that correct?

14 A. Yeah.

15 Q. I'm just asking, in your
16 experience, you stated you deal with
17 investment products and distressed assets.
18 In the context of this transaction here,
19 did you understand that there was a
20 trustee and a collateral agent?

21 A. Yes.

22 Q. Did you have an understanding as
23 to the rights and responsibilities of the
24 trustee and the collateral agent in the
25 context of the notes that DK was

1 BASTABLE

2 purchasing?

3 MR. RENENGER: Same instruction.

4 A. Honestly, I'm not sure the legal
5 responsibilities that the trustee has or
6 that the trustee collateral manager has
7 under the agreement.

8 Q. I'm not asking for the legal
9 responsibilities. I'm talking about just
10 their general obligations. What do they
11 do? Do you have an understanding as to
12 what they do -- let's try to restate it
13 again.

14 Prior to purchasing these notes,
15 both the junior secured and the unsecured,
16 did you have an understanding as to what
17 physical responsibilities the collateral
18 agent and the trustee would have?

19 A. At a high level, yes.

20 Q. Could you explain to me what
21 that understanding was?

22 A. That the collateral agent would
23 be responsible for making sure that -- we
24 have obviously have a security package
25 under the terms of the agreement and there

1 BASTABLE

2 would be certain collateral associated
3 with that. And you know, the company
4 would have a certain amount of flexibility
5 to potentially do things with that
6 collateral. And part of the collateral
7 agent's responsibility would be to ensure
8 that anything that was done to that
9 collateral didn't compromise our rights as
10 creditors with respect to that collateral
11 or ran afoul of the collateral provisions
12 of the security agreement or whatever
13 other governing documents there were.

14 Q. Sitting here today, are you
15 aware of any facts that would suggest that
16 Wells Fargo ran afoul of the documents?

17 MR. RENENGER: I'm going to
18 object to that question as certainly
19 being well beyond the scope of a
20 30(b)(6) and on that basis instruct
21 the witness not to answer.

22 MR. KOCHMAN: We are going to go
23 through a series of questions, you can
24 instruct him not to answer, but we
25 will just create a record for the

1 BASTABLE

2 court.

3 Q. Let's refer to DK-8. If you
4 don't mind pulling that out. Please
5 correct me if I'm wrong. I believe you
6 testified earlier that you personally
7 don't recall reviewing the security
8 agreement prior to DK taking a position in
9 ResCap; is that right?

10 A. That's right.

11 Q. But you believe that someone at
12 DK probably did?

13 A. Yes.

14 Q. Are you aware who that person
15 might be?

16 A. I'm not positive who it would
17 have been. But likely one of the
18 individuals that I have referenced or
19 potentially someone else in our legal
20 department.

21 Q. Is it your understanding that
22 the general practice of the legal
23 department or whomever would have reviewed
24 this document would have reviewed it
25 thoroughly?

1 BASTABLE

2 MR. RENENGER: Object to the
3 form of the question. Calls for
4 speculation. If you know, you can
5 answer.

6 A. I'm not sure how you define
7 thoroughly. There are certain things that
8 are important to us as investors in an
9 instrument like this that we would have
10 reviewed and focused on here. There may
11 be other components of an agreement like
12 this that are sort of more, let's call it,
13 boilerplate where we wouldn't have felt
14 necessarily the need to review in as much
15 detail. But there would have been some
16 review and understanding of the debt
17 instrument that we were buying into.

18 Q. I'm going to direct your
19 attention to section 10 and section 15 of
20 DK-8 and my question to you with respect
21 to each section is going to be whether
22 those provisions would be of the
23 boilerplate variety or be something you
24 would delve into more deeply? And
25 specifically, I'll direct you to --

1 BASTABLE

2 A. Section 10?

3 Q. Yes. Which I believe is on page
4 24 of 19 of 785.

5 MR. RENENGER: Is there a
6 question pending?

7 MR. KOCHMAN: Yes.

8 A. I'm sorry, I'm on the page.

9 Q. The question was whether
10 provision 10 would have been a provision
11 that you would have focused on or whether
12 this would fall under what you
13 characterized as the most boilerplate
14 variety.

15 MR. RENENGER: I'm going to
16 object to the form of the question in
17 that he's already said he wasn't
18 involved in reviewing this document
19 and believes somebody would have
20 reviewed it but doesn't know who or
21 how much time they devoted to it. So
22 you are in the realm of very wide
23 speculation here. I'm not quite sure
24 what you are asking for.

25 MR. KOCHMAN: It's fine if you

1 BASTABLE
2 want to put an objection on. I'd ask
3 you please do not give a speaking
4 objection to counsel your witness.
5 The witness is here in his capacity as
6 a corporate representative and so I'm
7 asking him a question. He has also
8 characterized that Davidson Kempner
9 would review such documents, focusing
10 on certain provisions more and other
11 provisions would be of more
12 boilerplate frankly.

13 MR. RENENGER: And you are,
14 again, quite far afield of the
15 30(b)(6) topics. You told me what
16 topics they relate to but have made no
17 representation how the questions
18 you're asking relate to the topics.
19 To me they don't. And absent such a
20 proffer, this deposition is going to
21 be concluded.

22 MR. KOCHMAN: Are you
23 instructing your witness not to
24 answer?

25 MR. RENENGER: Are you willing

1 BASTABLE

2 to make a proffer?

3 MR. KOCHMAN: Well, I think my
4 questions will all relate to -- my
5 questions related to the topics that I
6 have already put on here. So I think
7 maybe I have to ask you how my
8 questions do not in your view relate
9 to the topics, the many topics that I
10 have identified.

11 MR. RENENGER: Topic 3, first
12 one you identified, "The content of
13 any analysis provided to you by
14 Houlihan Lokey." This document has
15 nothing to do with Houlihan Lokey.

16 Topic 4, "You or any noteholders
17 expected recovery under the
18 prepetition plan support agreement."
19 That didn't come into existence until
20 May 2012, this document is dated 2009.
21 Every other topic on the list that you
22 referenced also is a 2012 era
23 document, not a 2009 era document.

24 MR. KOCHMAN: My questions
25 relating to this document here go to

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BASTABLE

Davidson Kempner's belief as to what claims they may have. Which would fall under whether Houlihan Lokey believed that there were claims that the JSNs may have. I believe this all falls within the broad topic of what claims the JSNs believed they may have for recovery outside of the debtors' estate.

MR. RENENGER: Does it relate to their decision to enter into the PSA?

MR. KOCHMAN: At this point right now, you can instruct your witness not to answer. You can let me ask my questions and put your objection on, but I don't believe that this colloquy is useful.

MR. RENENGER: Okay. Then we are done.

MR. KOCHMAN: So with respect to all of my other questions, you are walking out? You will not let us --

MR. RENENGER: Frankly, I haven't heard an adequate proffer yet.

1 BASTABLE

2 I think you are trying to take
3 discovery on something completely
4 unrelated to the topic 30(b)(6) and
5 completely unrelated to our objection
6 to the plan. I think it's -- I'm not
7 sure what you are doing here, but it
8 sounds like you are trying to lay a
9 foundation for something unrelated. I
10 think it's improper, I think it's an
11 abuse of process. This discovery is
12 limited to Phase II and plan
13 objections and that's not what this
14 is.

15 MR. KOCHMAN: So let's go to one
16 area and you can instruct your witness
17 not to answer if you'd like.

18 Let's mark this as DK-21.

19 (DK Exhibit 21, summary of the
20 examiner's findings, marked for
21 identification, as of this date.)

22 Q. Mr. Bastable, I believe you
23 testified earlier that one of the
24 documents you reviewed in preparation for
25 this deposition was the summary of the

1 BASTABLE

2 examiner's findings; is that correct?

3 A. Yes, it was.

4 Q. Is this the document that you
5 reviewed?

6 A. Yes.

7 Q. I want to direct your attention
8 to page 43 of this document on to page 44
9 under the heading, Junior Secured
10 Noteholder Causes of Action. I'd like you
11 to read that paragraph that goes from page
12 43 to 44.

13 Do you have an understanding as
14 to what that section I just directed to
15 you means?

16 MR. RENENGER: I'm going to
17 object to the question as being beyond
18 the scope of the 30(b)(6) topics and
19 on that basis instruct the witness not
20 to answer.

21 Q. Does DK agree with the opinion
22 expressed by the examiner in the section
23 that I have pointed out to you?

24 MR. RENENGER: Same instruction,
25 same objection. Anything else?

1 BASTABLE

2 MR. KOCHMAN: Give us a minute.

3 (Whereupon, there is a recess in
4 the proceedings.)

5 Q. Among the objections to the plan
6 that you reviewed, did you review Wells
7 Fargo's objection to the plan?

8 A. I did not. I did not review
9 their specific objection.

10 Q. Apart from any discussions with
11 counsel, did you have any discussions,
12 excluding counsel or privileged
13 conversations, about Wells Fargo's
14 objection to the plan?

15 MR. RENENGER: I am going to
16 object to the form of the question as
17 being -- you know what, I'll let him
18 answer this one.

19 A. I have not had any
20 conversations.

21 MR. KOCHMAN: That's it.

22 MR. RENENGER: Okay, thanks.

23 (Time noted: 2:20 p.m.)
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25

1
2 STATE OF NEW YORK)
3) :ss
4 COUNTY OF NEW YORK)
5

6 I, CONOR BASTABLE, the witness
7 herein, having read the foregoing
8 testimony of the pages of this deposition,
9 do hereby certify it to be a true and
10 correct transcript, subject to the
11 corrections, if any, shown on the attached
12 page.
13

14 _____
15 CONOR BASTABLE
16
17
18

19 Sworn and subscribed to before me,
20 this _____ day of _____, 2013.
21 _____

22 Notary Public
23
24
25

C E R T I F I C A T I O N

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

I, ERICA L. RUGGIERI, RPR and a
Notary Public within and for the State
of New York, do hereby certify:

That I reported the proceedings
in the within-entitled matter, and
that the within transcript is a true
record of such proceedings.

I further certify that I am not
related by blood or marriage, to any
of the parties in this matter and
that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 4th day of
November, 2013.

ERICA L. RUGGIERI, RPR

----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
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